(24,183)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 134.

DANIEL J. LEARY, APPELLANT,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY AND THE CITY COLLECTOR OF THE CITY OF JERSEY CITY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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a TRANSCRIPT OF RECORD.

United States Circuit Court of Appeals for the Third Circuit.
In Equity.

1598.

DANIEL J. LEARY, Appellant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and EDWARD FRY, City Collector of the City of Jersey City.

Lands Leased by the State of New Jersey to the Morris & Cummings Dredging Company.

On Appeal from the District Court of the United States for the District of New Jersey.

1 Circuit Court of the United States, District of New Jersey.

In Equity.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and EDWARD FRY, City Collector of the City of Jersey City, Defendants.

Bill of Complaint.

(Filed July 9, 1906.)

To the Judges of the Circuit Court of the United States for the Third Circuit and District of New Jersey:

Daniel J. Leary brings this, his bill, against the Mayor and Aldermen of the City of Jersey City and Edward Fry, City Collector of the City of Jersey City, in the State of New Jersey, upon which your orator complains and says:

1. That he is a citizen and resident of the City of New York, State of New York; that the Mayor and Aldermen of the City of Jersey City is a municipal corporation created by, and existing under the laws of the State of New Jersey, and is a citizen of the State of New Jersey; that the said Edward Fry, City Collector of the said City of Jersey City, is a resident of, and a citizen of the State of New Jersey.

2. That on or about the Thirtieth day of April, eighteen hundred and eighty-one, the State of New Jersey, by its proper officers thereunto duly authorized, by a written instrument of lease, a copy of which is hereto annexed and marked exhibit "One" and made a part

of this Bill of Complaint, leased to the Morris & Cumings Dredging Company, a body corporate of the State of New York, certain lands under the waters of New York bay, commencing at high water mark upon the shore of what is now Jersey City, formerly known as Greenville, and described as in said lease hereunto annexed and marked Exhibit "One" as aforesaid.

Said lands then and now, being wholly under the waters of New York bay, and the property of the State of New Jersey, and leased to the said lessee and its assigns, in consideration of the payment by said lessee or its assigns to the State of New Jersey of an
2 annual rent of Four Thousand two hundred and thirty-three dollars and sixty cents ($4,233.60), and upon the terms, covenants and conditions contained in said written lease, to which your orator begs leave to refer; that said annual rent has always been duly paid; that said lease also provided for a privilege of purchase by said lessee or its assigns as more fully set out in said lease; and that said lands have been designated upon the official assessment map of Jersey City as lots 4-B and 7-B, Block 1507.

That the Morris & Cumings Dredging Company did upon the Twenty-fourth day of February, nineteen hundred and four, assign and transfer said lease and all its rights thereunder unto your orator, and your orator is now in peaceable possession of the said leasehold rights and privileges, claiming to own the same; that a copy of said assignment is annexed hereto and made a part of this Bill of Complaint and marked exhibit "Two." That said lease and assignment were duly and properly filed and recorded.

3. That the said Mayor and Aldermen of the City of Jersey City claim to have assessed, levied and apportioned taxes against said lands under water hereinabove mentioned as follows:

Year.	Tax.
1883	$1,410.40
1884	1,281.40
1885	3,084.68
1886	2,763.60
1887	7,741.44
1888	6,007.68
1889	5,644.80
1890	5,322.24
1891	6,106.00
1892	6,106.00
1893	5,912.50
1894	5,912.50
1895	5,912.50
1896	5,891.00
1897	6,213.50
1898	6,149.00
1899	6,106.00
1900	11,336.40
1901	11,648.00
1902	11,564.80
	$122,114.44

3 4. That by reason of the said pretended assessments and levies as aforesaid, the said Mayor and Aldermen claim liens or encumbrances upon the said lands above mentioned for the amount of taxes with interest at ten per cent.; on the taxes assessed for each year from the twentieth of December of said year to the present time, and further claim that said liens or encumbrances are paramount liens, and that all interests in said property, including the interest of your orator, as lessee, including your orator's privilege of purchase, are subject and subsequent to such liens and encumbrances and they further claim the right to sell said lands and premises and divest the interest of your orator in the same for the purpose of collecting said taxes, as first and paramount liens, against said lands; that your orator, however, denies the validity, priority and extent of the alleged liens of said taxes, but that no suit is pending to enforce or test the validity of said taxes and the encumbrances claimed on account thereof.

5. That the defendant, Edward Fry, is the City Collector of the City of Jersey City, and claiming to act by virtue of his said office, he has notified your orator by notice, dated the nineteenth day of April, nineteen hundred and six, that upon the twenty-ninth day of May, nineteen hundred and six, he would sell under section 13, Chapter 112, of the laws of 1885, and the amendments thereto, the lands and premises above mentioned, for the alleged taxes in arrears as above set forth, which said notice, however, was not received by your orator until on or about the seventh day of May, nineteen hundred and six, and a copy of which said notice is hereto annexed and marked exhibit "Three" and made a part of this Bill of Complaint.

That your orator says and charges, that no advertisement of said sale was in fact published on or about the twenty-eighth day of April, as stated in said Notice, or at any time prior to the third day of July, nineteen hundred and six, as hereinafter set forth.

6. That the defendant, Edward Fry, further claiming to act by virtue of his alleged office of City Collector of the said City of Jersey City, has caused to be published under date July third nineteen hundred an- six, in the Evening Journal, a newspaper published and circulated in said City of Jersey City, an advertisement or notice that, he, the said Edward Fry, as City Collector, will on the twenty-fourth day of July, next, expose for sale and sell at public auction to the highest bidder at one o'clock in the afternoon of that day, at the Assembly Chambers in the City Hall of said city, certain lands and premises including the lands and premises
4 hereinbefore mentioned, which said advertisement stated that said sale will be made under the provisions of the act of the legislature of the State of New Jersey entitled: "An act concerning the settlement and collection of arrearages of unpaid taxes, assessments, water rates or water rents in cities of this State and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessments," (approved March 30th, 1886, and the various supplements thereto

being Chapter 112, of the laws of 1886, above referred to, and commonly known as the Martin Act); and that said lands are to be sold for the non-payment of the taxes and assessments as set forth above, together with costs of sale; a copy of which advertisement or notice, or so much thereof as affects the premises of your orator, is hereto annexed and marked exhibit "Four" and made a part of this Bill of Complaint.

7. Your orator further shows that he is the assignee of the lessee of said lands and premises herein mentioned, of the State of New Jersey, and that the fee of the said lands and premises is in the State of New Jersey, and that the lands of the State of New Jersey, are not, and never have been, subject to taxation by a municipality or other political subdivision of the State of New Jersey; that the interest of your orator in said lands and premises is that of a lessee, and that if any taxes were levied or imposed upon the said lands and premises, the obligation to pay the same is upon the landlord, to wit, the State of New Jersey.

That under the laws of the State of New Jersey, all lands are taxed in the names of the owners of the fee, and the owners of the fee are liable for the said taxes; that under the provisions of section 33, of an act of the legislature of the State of New Jersey, commonly known as the tax act, 1846, approved April 14, 1846, General Statutes 3287, it is enacted:

"That the tenants or other persons in possession or having the care of any lands or tenements, and their goods and chattels, shall be and they hereby are made liable for the payment of taxes, which are or shall be imposed on the said lands; and if any such tenant or other person shall pay, or his or her goods and chattels, shall be levied on and sold to pay any such tax, it shall be lawful for him to deduct the sum so paid out of the rent, or to recover the same from the landlord or owner by action of debt, with costs; provided always, that nothing in said act shall affect or extend to any contract made or to be made between landlord and tenant."

That such act was in force at the time the taxes hereinbefore referred to were sought to be imposed upon the lands and premises hereinbefore mentioned, and remained in force until, by an act approved April 8th, 1903, the Legislature of the State of New Jersey enacted:

"The goods and chattels of the tenants or other persons in possession or having the care of any real property shall be liable for the payment of the taxes on the land, and on payment may recover the same from the landlord or owner by action on contract or by deducting the sum so paid out of the rent then or afterwards due, unless otherwise provided by his contract with the landlord."

That the taxes for the collection of which the said defendant, Edward Fry, City Collector of the City of Jersey City, has threatened to sell said lands and premises amove mentioned, were levied, assessed and apportioned upon the fee of said lands and premises, as against the Morris & Cumings Dredging Company as owners of said lands and premises, until the lease of the same was assigned to your orator, and then as against your orator as owner, notwith-

standing the fact that the said Morris & Cumings Dredging Company, and your orator, never were the owners of the fee of said lands and premises, but had only leasehold interests therein as above mentioned; that your orator cannot recover from the State of New Jersey, the amount of any tax which he may be compelled to pay because the lands of said State are not liable to taxation, and because your orator cannot sue said State and the levying upon the lands and premises herein mentioned, of such taxes, and the threatened sale of said lands to enforce collection of the said taxes, will result in depriving your orator of the equal protection of the laws within the meaning of the first section of the fourteenth amendment of the Constitution of the United States and will deprive your orator of his property without due process of law within the meaning of the said section of the said Constitution.

That under the provisions of the said Martin Act, under Section 13, of which the City Collector of Jersey City threatens to sell said lands under water, it is, as more fully hereinafter mentioned, provided, that immediately upon said sale being had, the purchaser of any lands, is, upon giving notice to all persons interested
6 therein, forthwith entitled to the possession of said lands, if unoccupied, and within thirty days, if occupied, and is entitled to the writ of assistance of the State of New Jersey, out of the Circuit Court of the county in which the city is situate, or out of the Court of Chancery, for the recovery of the possession of said lands; that by such proceeding the possession of your orator will be disturbed; that under the provisions of said act, more fully hereinafter set forth, it is provided, that the purchaser at such sale shall take a good and sufficient title to said premises in fee simple absolute, free and clear of all incumbrance except taxes, assessments and water rates, levied after the year for the taxes of which said sale is made, and that the deed to be given to such purchaser shall be presumptive evidence of such title; that it is therefore claimed that the sale of said lands under the provisions of said Martin Act will void the lease of your orator, and your orator shows that the effect of such proceeding will be to cast a cloud upon the title of your orator's leasehold, including your orator's privilege of purchase, and of illegally interfering with, and attempting to take and appropriate the property of your orator.

8. That your orator's assignor leased said lands and premises from the State of New Jersey and therein stipulated and agreed to pay a certain yearly rental therefor, and said lease does not contain any provisions for taxation, and said lands and premises have not, nor has the interest of your orator therein, ever been subjected to taxation by the Legislature of the State of New Jersey, and the attempt of the city authorities, claiming to act under and by virtue of the authority of the Legislature of the State of New Jersey, to levy said taxes, and to sell said lands and premises and to deprive your orator of the possession thereof is in violation of your orator's constitutional rights and will impair the obligation of your orator's contract, and that such attempt upon the part of the said city authorities in attempting to deprive your orator of his property, is without due process

of law, and will result in denying to your orator the equal protection of the law.

9. That the States of New York and New Jersey in eighteen hundred and thirty-three entered into a compact or agreement in reference to the boundaries between the two States (the lands herein mentioned lying in the Bay of New York, between the shores of said two States), a copy of which agreement is hereto annexed and marked Exhibit Five and made a part of this Bill, which said compact was approved by the Congress of the United States (U. S.
7 Statutes at Large, Vol. 4, p. 808), and in and by said compact, as will appear by the terms thereof, the State of New Jersey, while becoming the proprietor of the lands herein mentioned, yet acquired no jurisdiction over the same, and, by the terms of said compact all benefits for which taxation may legally and properly be imposed are secured by your orator from the State of New York, and not from the State of New Jersey, and your orator charges and insists that he has never received any benefit or advantage from the State of New Jersey; and that the attempted imposition of the tax upon the said property will result in depriving your orator of his property without due process of law and will result in the taking of private property for public purposes without compensation and will deny to your orator the equal protection of the laws within the meaning of Articles Five and Fourteen of the amendments to the Constitution of the United States and of Paragraph 16 of Article I of the Constitution of New Jersey.

10. Your orator further shows and charges the fact to be that the lands and premises herein mentioned and described are not within the jurisdiction of the State of New Jersey, and not subject to the sovereignty of said State, and cannot be taxed under the authority of said State, although within the geographical boundaries thereof.

And your orator claims and insists that prior to the year eighteen hundred and thirty-three, the geographical limits of the State of New Jersey extended only to high water mark on the New Jersey shore of the Hudson River and New York Bay, and that said lands and premises herein mentioned were not within the geographical limits of said State; that said State never was in possession of the lands under the waters of New York Bay, and never claimed possession thereof, and your orator begs leave to refer to the various acts, statutes, ordinances, and ancient and public documents bearing upon said matters; and that in 1833 Commissioners were appointed by the States of New York and New Jersey to fix a boundary line between the two States; that an agreement was reached, which was confirmed by the Legislatures of both States, and by an Act of Congress (Laws of N. Y., 1834, p. 8; Laws of N. J., 1834, p. 118; United States Statutes at Large, Vol. 4, p. 808); that the said compact or agreement appears at length in the general statutes of the State of New Jersey, page 3464, and your orator begs leave to refer thereto and to make the same a part of this Bill of Complaint.

Your orator claims and insists that under said compact or
8 agreement, the State of New Jersey becomes the proprietor and legal owner of the lands under water extending from the

shore unto the middle of the Hudson River and New York Bay, but jurisdiction over said water, and lands thereunder, is retained by the State of New York, and your orator claims and insists that sovereignty over said water and the lands thereunder is retained by the State of New York, and that the State of New Jersey has no sovereignty thereover or right or power to tax or to authorize taxation of said lands under water.

11. And your orator further shows that said compact was of no force and was ineffective until it had been confirmed by the Congress of the United States; that said Congress did confirm said compact by the act hereinbefore referred to, to which your orator begs leave to refer, and your orator claims and insists that the proper construction of this act is that the State of New Jersey has no sovereignty over, or power to tax the said lands, and that the determination of this question depends upon the construction of said act of Congress.

12. That the levying of said taxes aforesaid and the threatened sale to enforce collection thereof, will, because the said lands are not properly taxable by the State of New Jersey, result in depriving your orator of his property without due process of law, or taking his property for public purposes without just compensation, and of denying to him the equal protection of the law, all in violation of the rights secured to him by the Constitution of the United States and of the State of New Jersey.

13. And your orator further shows that the said taxes and alleged liens for collection of which the said City Collector threatens to sell the said lands and premises above mentioned, are altogether invalid and of no force and effect, because the said lands are not, and never were, within the boundaries of the City of Jersey City, and never were subject to taxation by the City of Jersey City.

That it is claimed and insisted by the City authorities of the City of Jersey City, that the lands and premises herein mentioned, are included within the corporate limits of the City of Jersey City by reason of the consolidation of the township of Greenville with the City of Jersey City, under an act of the Legislature of the State of New Jersey approved February 4th, 1873, to which your orator begs leave to refer and make a part hereof; that it is claimed and insisted that by the the provisions of said act, all that territory comprised within the limits of the township of Greenville became a part of the City of Jersey City, subject to taxation by said City authorities.

9 And your orator further shows that the township of Greenville was incorporated by an act of the Legislature of the State of New Jersey, approved on the 18th of March, 1863, and the boundaries of the said township are therein mentioned and described as follows: "All that southwestern part or portion of the township of Bergen, as it existed immediately previous to the passage of said act, and comprised or nearly so, within the limits of what is known as Washington School District, No. 3, bounded on the southeast by New York Bay, on the west by the Morris Canal and the lands of James Curie, Esq., on the northwest by Newark Bay and

the Hackensack River; on the northeast by a road or lane known as Myrtle Avenue with a continued line running southeasterly from said Avenue to New York Harbor, and northwesterly from said Avenue to the Hackensack River," that no lands under water were included within said township by the provisions of said act, and no lands under water were ever included within said township by any other legislation, that no lands under water were included in the township of Bergen, as mentioned and described in the charters granted for said township.

Your orator therefore claims and insists that the lands under water adjoining the shore of Greenville did not become a part of Jersey City.

14. And your orator further shows that the lands and premises herein mentioned receive no governmental benefit from the municipality of Jersey City, and never have received any such benefit therefrom; that they are lands under the waters of New York Bay, within the jurisdiction of the State of New York, and cannot, from the nature of things, be benefited in any manner by said municipality, and the attempt of the City authorities to enforce collection of said taxes before mentioned which were levied and imposed for governmental and municipal purposes, is altogether void and illegal, and will result in taking your orator's property for public use without just compensation, in depriving your orator of his property without due process of law, in denying to your orator the equal protection of the laws, within the meaning of the Constitution of the State of New Jersey, and of the United States, and all in violation of your orator's constitutional rights.

15. And your orator further shows that although, as he claims and insists the assessment and levy and taxes imposed upon the said lands and premises above mentioned are altogether void and of no force or effect, and that the attempt of the said City authorities to sell said lands and premises for the purpose of collecting said taxes is altogether illegal, yet your orator says that by section five of said act, commonly called the Martin Act, the legislature of the State of New Jersey has enacted:—

"The Comptroller or other collecting officer shall, on the receipt of the purchase money on any sale, or of bonds in lieu thereof, as provided by this act, execute and deliver to the purchaser a certificate of such sale, which shall contain a covenant on the part of the city to refund the amount paid for said lands in cash where cash was received, and to return the bonds or obligations, where bonds or obligations were received, without interest, in case the title conveyed by said sale shall prove invalid; upon surrender of the said certificate of sale and proof of service of the notice thereof, as hereinafter provided, upon the owners and mortgagees of the said lands and premises, the comptroller or other collecting officer shall, after the expiration of six months from the date of such service, execute and deliver to the purchaser at such sale, his heirs, devisees and assigns, a deed for said lands and premises, which shall be sealed and attested by the Clerk of the City and proved in the usual manner; and such purchaser, his heirs, legal representatives or assigns, shall take a

good and sufficient title to the property sold in fee simple absolute, free of all incumbrances (except taxes, assessments, water rates levied after the confirmation of said report, and except sewer assessments made and levied under the provisions of an act entitled "An act to authorize cities to construct sewers and drains and to provide for the payment of the costs thereof," approved March eighth, one thousand eight hundred and eighty-two, when the sewer assessment on the land sold was not included in the report of the commissioners), of which the said deed shall be presumptive evidence in all courts and places, and in any proceedings or actions to be by such purchaser, his heirs, legal representatives or assigns, taken, prosecuted or defended for the recovery of the possession of the property so sold as aforesaid, or in the establishment or defense of his or their title shown as aforesaid by such deed, the title shall not fail or be defeated by reason of any irregularity or formal defect in the procedure taken under this act; upon which the sale shall have
11 been made or the title conveyed as aforesaid, or by reason of any illegality in fixing and adjusting the tax, assessment and lien, to enforce which said sale was made, or in the proceeding for collecting the same."

and further

Section 6. "Any person or persons having an estate in, or mortgage upon any lands and premises sold in pursuance of the fourth section of this act, whose estate or lien appears of record in the County, may at any time before the expiration of six months after notice shall have been given to him of such sale, by the purchaser, his heirs, or assigns, in the manner hereinafter provided, or before a deed of said premises shall have been delivered, as provided in this act, redeem said lands and premises by paying to the treasurer of the City, for the use of the purchaser, his heirs or assigns, the sum paid by him at such sale, with interest at the rate of ten per centum per annum from the date of the sale, and one dollar for each notice served as hereinafter provided; and upon such redemption the City shall pay to such purchaser, his heirs or assigns, the amount received from the person redeeming. Such notice shall be in writing, and shall be served by the purchaser of the property or his agent on said owner or mortgagee, either personally or by leaving the same at his place of abode with a member of his family above the age of fourteen years; in case such owner or mortgagee is a non-resident, or his residence cannot, upon due inquiry, be ascertained, then the notice may be served by publishing the same in a newspaper printed and circulating in the City for a period of six weeks, at least once in each week, and depositing a copy of such notice, within twenty days after its first publication, in the post office of the city, enclosed in a wrapper, post paid, directed to such owner or mortgagee, at his or her last known post office address, if the same can be ascertained; inquiry for the residence or post office address of such owner or mortgagee shall be made by the purchaser or his agent upon the lands purchased at the sale, if they are occupied, and wherever else in the City the same may be likely to be ascertained and also by an exami-

nation of the record of the deed or mortgage on account of
12 which such notice is given; an affidavit shall be made by the purchaser or his agent setting forth the manner and particulars of the service and in case the same is made by publication, setting forth what inquiry was made to ascertain the residence and post office address of such owner or mortgagee, and in such case an affidavit of the publication shall also be made by the person publishing such newspaper, or by some one in his employ having cognizance of the publication, stating the particulars thereof; and the affidavit or affidavits shall be filed in the office of the Clerk of the City within one month after the date of service, and shall be prima facie evidence in all courts and places of the facts therein stated; the purchaser shall be entitled to the possession of said lands immediately upon giving such notice to the owner thereof, in case the same are unoccupied, or if they are occupied, then within thirty days thereafter; and he shall have the same remedy, by writ of assistance or otherwise, in the Circuit Court of the County in which the City is situate; or in the Court of Chancery, for the recovery of the possession of said lands as the purchaser of mortgaged premises at a foreclosure sale is now or may hereafter be entitled to by any law or practice of this State; provided, however, that if any estate in any of the said lands shall be held by any heir or devisee of a decedent whose estate appears of record in the county, or if any mortgagee or lease shall be held by the executor or administrator of any decedent whose mortgage or lease appears of record in the county, such heir, devisee, executor or administrator shall be entitled to redeem and to have notice as aforesaid before the purchaser shall be entitled to the possession of the lands; and provided also, that the records and schedules of all sales made under this act shall be filed and kept in the same offices of the several cities wherein records of tax sales are now by law required to be kept."

And your orator shows that if said sale is permitted, your orator will be greatly harassed and injured; that his possession of said lands will be disturbed; that the provision in said act giving the purchaser at the sale of said lands a title in fee simple, free and clear of incumbrances, will operate to divest the leasehold estate
and privilege of purchase of your orator in said lands and
13 premises; that the possession of your orator of his leasehold rights and privileges will be disturbed; that the marketability of the leasehold estate of your orator depends upon the record title, and it is necessary that such title be clear or your orator cannot dispose of such leasehold rights, and that a sale of said premises, under the provisions of the Martin Act as above set forth, will cast a cloud upon the title of your orator to such leasehold rights and will apparently render the title of your orator imperfect and unmarketable, and thereby will greatly harass, and injure your orator in the premises and that the actings and doings of said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury, and oppression of your orator in the premises.

16. Your orator charges and insists that the proceedings of said authorities of the City of Jersey City to sell said lands and premises,

under the provisions of said act commonly known as the Martin Act, will deprive your orator of his property without due process of law within the meaning of article fourteen of the amendments to the Constitution of the United States, and will result in denying to your orator the equal protection of the laws within the meaning of said article, and will result in the taking of your orator's property for public use without just compensation, within the meaning of Article five of the amendments to the Constitution of the United States and Section sixteen, of Article one of the Constitution of the State of New Jersey, and said act and section thirteen thereof is, by reason of the matters aforesaid, unconstitutional, and null and void, and the proceedings under said act taken by said City Collector to sell said lands and premises, as before mentioned, are in violation of the rights secured to your orator, by the Constitution of the United States and the amendments, and by the Constitution of the State of New Jersey.

And your orator shows that when he became the owner of said lease, there was no lien for taxes upon the said lands and premises, and your orator shows and claims that the threatened sale of said lands and premises to enforce the payment of said taxes, is absolutely illegal, and void, and will, if allowed to proceed, result in depriving your orator of his property without due process of law, and in denying to him the equal protection of the laws, in taking private property for public use without just compensation, and in giving to an act of the legislature of the State of New Jersey, to wit, the Martin Act, so called, the effect of impairing the obligation of your orator's contract of lease and assignment, all of which will be in violation of the rights secured to your orator by the Constitution of the United States and the State of New Jersey.

14

17. And your orator further shows that it is claimed and insisted by the Mayor and Aldermen of the City of Jersey City, that under the provisions of the Charter of Jersey City, the taxes hereinbefore mentioned and set forth, are liens upon said lands and premises above mentioned, paramount to any interest of your orator, in said lands.

18. That the said Mayor and Aldermen of Jersey City, have proceeded to levy taxes upon said lands above mentioned for the years subsequent to 1902 as follows:

Year.	Tax.
1903	$11,440.00
1904	11,398.40
1905	12,448.80
	$35,287.20

That said Mayor and Aldermen claim and insist that under the provisions of the said Charter of Jersey City, and under the provisions of section 49, of an act of the legislature of the State of New Jersey entitled "An act for the assessment and collection of taxes," approved April 8th, 1903, by which it is provided:

"All unpaid taxes on real property with interest, penalties and

costs of collection shall be, on and after the twentieth day of December next after the assessment, a first lien on the land on which they are assessed, and paramount to all prior or subsequent alienations and descents of said land or incumbrances thereon, except subsequent taxes."

that said taxes above mentioned are liens upon said lands prior to any interest of your orator in the same.

19. That the said Mayor and Aldermen of Jersey City threaten to levy taxes upon said lands for the year nineteen hundred and six, which said taxes, said Mayor and Alderman claim and insist will be, by virtue of the provisions of the Charter of Jersey City, and of the tax act hereinbefore mentioned, a prior and paramount lien to any interest of your orator in the same.

20. And your orator shows that all of said taxes which have been levied are, and such taxes as may subsequently be levied will be, apparent liens upon said premises, apparently prior and paramount to the interest of your orator in the same; that such taxes are and will be a menace to the continued quiet possession of your orator's rights; that they constitute and will constitute a cloud upon your orator's title; and prevent and will prevent your orator from selling or disposing of his rights, the market ability of such rights depending upon a clear record title; that they prevent and will prevent your orator from improving said lands and from investing money therein; and they render and will render the rights of your orator in said land useless and valueless.

That for the reasons hereinbefore set out as affecting the validity of the sale threatened by said City Collector, all of said taxes are wholly invalid and illegal and such taxes as may hereafter be levied will be wholly invalid and illegal; and further the presence of said taxes and the action of the Mayor and Aldermen of Jersey City in continuing to levy taxes upon said lands, results and will result in denying to your orator the equal protection of the law, in taking your orator's property without due process of law, in taking your orator's property for public use without compensation and in impairing the obligation of a contract, within the meaning of the provisions of the fifth and fourteenth amendment to, and the tenth section of the first article of the Constitution of the United States and of paragraph 16 of Article I of the Constitution of New Jersey. That all the actings and doings of the said defendants are contrary to equity and good conscience.

21. Your orator further shows and charges that the matters in dispute amount, exclusive of interest, to the sum of over two thousand dollars; that the amount of taxes for which said City Collector threatens sale as aforesaid, exclusive of interest and costs, is the sum of one hundred and twenty-two thousand one hundred and fourteen dollars and forty-four cents as against the lands and premises herein described; that the amount of taxes for nineteen hundred and three to nineteen hundred and five, exclusive of interest is the sum of thirty-five thousand two hundred and eighty-seven 20/100 dollars, and the annual tax upon said lands is over two thousand dollars; that the value of your orator's leasehold rights in said lands and

premises hereinbefore described exceeds the sum of two thousand dollars; and that the value of said lands and premises exceed the sum of two thousand dollars.

In consideration whereof and for as much as your orator is without remedy in the premises at the common law, and can only have adequate relief in the premises, in a Court of Equity where matters of this sort are properly relievable.

16 To the end therefor that the said defendants the Mayor and Aldermen of the City of Jersey City and the said Edward Fry as City Collector of said City of Jersey City, may full, true and perfect answer make, without oath, to all and singular the matters aforesaid, as if the same were here repeated and they and each of them interrogated thereto and that the Mayor and Aldermen of the City of Jersey City may set forth and specify its claims and encumbrances against the said lands and how and by what means or instrument the same are derived or created, and that it may be decreed by the order and decree of this Honorable Court that the defendant the Mayor and Aldermen of the City of Jersey City have no estate, or interest in, or encumbrance upon said lands and premises, or any part thereof, and that the said defendants, the Mayor and Aldermen of the City of Jersey City, and Edward Fry, City Collector of said City as aforesaid, may be restrained by the order and injunction of this court from selling or further advertising for sale, the premises aforesaid on account of the alleged taxes aforesaid and from giving any certificate of sale or deed therefor and from further interfering with your orator's possession and enjoyment of said premises, and leasehold rights herein, and that the said defendants may be directed to cancel the taxes levied upon said lands and may be restrained from proceeding to levy any taxes upon said lands, and that your orator may have such other relief in the premises as the circumstances of the case may require and as to your Honors shall seem meet.

May it please your Honors, the premises considered to grant unto your orator, not only the writ of injunction of the United States enjoining and restraining the said Mayor and Aldermen of the City of Jersey City and said Edward Fry as City Collector of the City of Jersey City, and his successors in office as above set forth, but also the writ of subpœna of the United States to be directed to the said Mayor and Aldermen of the City of Jersey City, and Edward Fry, City Collector of the City of Jersey City, commanding them and each of them on a certain day and under a certain penalty therein to be expressed, to be and appear before your Honors in this Honorable Court, then and there to answer the premises, and to stand to, abide by and perform such order and decree as the nature of

17 the case may require and as to your Honors shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray, etc.

DANIEL J. LEARY,
ZIEGENER & LANE,
Sol'rs for Compl't.

MERRITT LANE,
Of Counsel with Compl't.

STATE OF NEW YORK,
County of New York, ss:

Daniel J. Leary, of full age, being duly sworn according to law, upon his oath deposes and says:

That he is the Complainant in the foregoing Bill of Complaint; that he has read the said Bill; the matters and things therein set forth are true except where stated upon information and belief, and as to those matters and things, this deponent believes them to be true.

DANIEL J. LEARY.

Sworn and subscribed to before me this Fifth day of July, A. D. 1906.

CHARLES PLATNER,
[L. S.] *Notary Public No. 57, New York County.*

STATE OF NEW YORK,
County of New York, ss:

I, Peter J. Dooling, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of record, do hereby certify. That Charles Platner, before whom the annexed deposition was taken, was, at the time of taking the same, a Notary Public of New York, dwelling in said County, duly appointed and sworn, and authorized to administer oaths to be used in any court in said State, and for general purposes; that I am well acquainted with the handwriting of said Notary, and that his signature thereto is genuine, as I verily believe.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 5th day of July, 1906.

[L. S.] PETER J. DOOLING, *Clerk.*

18 STATE OF NEW JERSEY,
County of Hudson, ss:

Merritt Lane, of full age, being duly sworn according to law, upon his oath deposes and says:

That he is of Counsel with the Complainant in the above entitled cause; that he has compared the copies of exhibits hereto annexed to the Bill of Complaint, and that the copies so annexed are true copies of said exhibits except that the assignments contained copies of the leases, which are omitted because the said copies of leases are annexed as a separate exhibit.

MERRITT LANE.

Sworn and subscribed before me this 6th day of July, A. D. 1906.

C. WM. WENNER,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
County of Hudson, ss:

August Ziegener, Jr., of full age, being duly sworn according to law, upon his oath deposes and says:

That he is one of the solicitors for the Complainant in the above entitled cause; that he has examined the said maps and assignment books of the taxes and circumstances stated in the foregoing Bill of Complaint, as to the designation of the land and premises mentioned in the said bill upon the official assessment map of Jersey City and the facts as to the assessments sought to be levied upon said lands are true.

AUGUST ZIEGENER.

Sworn and subscribed before me this 6th day of July, A. D. 1906.
C. WM. WENNER,
Master in Chancery of New Jersey.

EXHIBIT ONE.

The State of New Jersey to all whom these presents shall come. Greeting:

Whereas, Pursuant to an act of the Legislature of said State, approved March 31st, 1869, entitled "Supplement to an act
19 entitled 'An act to ascertain the rights of the State and of Riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," and other statutes and joint resolutions of said State:

The Morris and Cumings Dredging Company, a body corporate of the State of New York, being the owner of lands fronting on the Bay of New York, in the City of Jersey City, in the County of Hudson, and State of New Jersey, which lie above high water mark, and in front of which the lands hereinafter leased lie, and so a Riparian proprietor within the said acts and joint resolutions; and being desirous of obtaining a lease for the lands under water hereinafter leased, which lie in front of said lands, and having applied to the Commissioners appointed under said act approved March 31st, 1869, and to the Governor of said State, for a lease of the lands hereinafter lease — and to fix the price and reasonable compensation and the annual rent for the lease of so much of said lands under water as lie below high water mark, and may properly be included in the lease; and the boundaries and the price, reasonable compensation and the annual rental to be paid for the same.

And Whereas, in compliance with the said application, the said Commissioners, to wit, Francis S. Lathrop, Bennington F. Randolph, Thomas McKeen, and Amizi Dodd, having due regard to the interests of navigation, have agreed to lease the lands hereinafter mentioned, and determined that the sum of four thousand, two hundred and thirty-three dollars and sixty cents as the annual rental to be paid for said lands under water so designated, and did fix

the sum of sixty thousand, four hundred and eighty dollars as the price or reasonable compensation, on payment of which a conveyance of all or any part of the said lands from rent would under said act be made.

And Whereas, the said applicant has hereby secured to be paid to the Treasurer of this State the said annual rental, and applied to the said Commissioners for a conveyance assuring to it, its successors and assigns the land under water hereinafter described.

Now therefore, the said State of New Jersey, by the said Commissioners; the Governor concurring; in consideration of the premises and of the rent, covenants and conditions hereinafter contained, doth hereby bargain, sell, lease and convey unto the said The Morris and Cumings Dredging Company and to its successors and assigns forever, "All that tract of land under the waters of the Bay of New York in the City of Jersey City in the County of Hudson and State of New Jersey described as follows: Beginning at high water mark on the west shore of the Bay of New York at the southwesterly corner of lands now or formerly of Richard Vreeland; and from thence running south four degrees and fifty-three minutes east, nineteen hundred and ten and 42/100 feet. Thence south eighteen degrees and thirty-seven minutes east thirteen hundred and sixty-one and 1/100 feet to the exterior line for solid filling as laid down on the "Plan for an equal apportionment among riparian owners of lands under water between Cavan Point and Constable's Hook, New York Bay, dated January 7th, 1871, and filed in the office of the Secretary of State of New Jersey at Trenton made by the Commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State" approved April 11th, 1864, and the Supplements thereto; thence westerly along said exterior line for Solid Filling curving to the south with a radius of Nineteen hundred and eight feet, Twelve hundred and four feet to a point, Thence still along said exterior line for solid filling South forty-seven degrees and fifty-one minutes west, Three hundred and eight feet. Thence north thirty-three degrees and eleven minutes west Eighteen hundred and thirty-six and 7/10 feet. Thence north twenty degrees and thirty-four minutes west Eleven hundred and sixty-six and 4/10 feet to the high water mark of the westerly shore of the Bay of New York at the southeasterly corner of lands of William Tuttle, thence northeasterly along the high water mark of said westerly shore of the Bay of New York to the place of beginning.

And also the right, liberty, privilege and franchise to exclude the tide water from so much of the lands above described as lie under tide water by filling in or otherwise improving the same and to appropriate the land above described to their exclusive private use.

And also all and singular the lands under water between the above mentioned exterior line for solid filling and the exterior line for piers mentioned in said act first recited and the most easterly line of the above described tract extended southerly to said pier line and

the most westerly line of the above described tract extended southerly to said pier line.

And with the right, liberty, privilege and franchise of building piers along on the land east above described that is to say,
21 that which lies between the said exterior lines already fixed above mentioned.

And if and when said exterior lines shall be fixed at any other points or places further out into said bay also any and all lands lying under water between the present exterior line for solid filling above described and said new exterior line or lines for solid filling and within the extension of the easterly and westerly lines aforesaid extended southerly to said new exterior line for solid filling, with the right, liberty, privilege, and franchise of excluding from the lands lying within the bounds last mentioned the tide water by filling in or otherwise improving the same and to appropriate the land above described to their exclusive private uses.

And if and when said exterior lines shall be fixed at any other points or places further out into said Bay; also any and all lands lying between the new exterior line or lines for solid filling and within said easterly and westerly lines extended southerly to said new pier line or lines with the right, liberty, privilege and franchise of building piers alone upon the land last mentioned. Together with all the right so far as the upland from time to time made shall adjoin the navigable water to the perquisites of wharfage and other like tolls and charges.

To take, to have and to hold, use, exercise and enjoy the said lands and premises, and all the rights, liberties, privileges, franchises and perquisites aforesaid, exercisable within and over, or with reference to the same, to and for the said several uses, intents and purposes, and in the manner and form that they are above granted unto the said The Morris and Cumings Dredging Company, and to its successors and assigns forever, subject to the regulations now imposed by law on the exercise of the said rights of property hereby granted, and to such as shall hereafter lawfully be made, yielding and paying therefor unto the said State of New Jersey the annual rent of four thousand two hundred and thirty-three dollars and sixty cents to be paid to the State of New Jersey by the said The Morris and Cummings Dredging Company, its successors and assigns in two equal half-yearly payments, one-half thereof on the thirtieth day of April, and the other on the thirtieth day of October, in each and every year forever, the first payment to be made on the thirtieth day of October in the year eighteen hundred and eighty-one.

And the said The Morris and Cummings Dredging Company, doth hereby for itself, its successors and assigns covenant and
22 agree to and with the said the State of New Jersey, that it the said The Morris and Cumings Dredging Company its successors and assigns shall and will from time to time, and at all times, well and truly pay, or cause to be paid to the said the State of New Jersey, the yearly rent or sum of four thousand two hundred and thirty-three dollars and sixty cents hereinbefore reserved, upon

the several days and times hereinbefore appointed for the payment thereof, and that it shall happen that the said yearly rent, or any part thereof, shall at any time hereafter be behind and unpaid for the space of sixty days next after the same shall become due, it shall be lawful, without demand for such rent in arrear, for the said the State of New Jersey, by its officers and agents or otherwise, into the said tract of lands and every part thereof to enter and distrain all things on said premises for said annual rent, or such part thereof as shall be behind and unpaid, and the distress and distresses there found to take and convey away and detain and keep, or otherwise dispose of according to law, until the said rent and all arrears thereof and the costs and charges occasioned by the non-payment thereof at the time in that behalf above mentioned shall be fully paid and satisfied; and also that in such case it shall be lawful, without demand for such rent in arrear, for the said State of New Jersey, by its officers or agents or otherwise, into the said tract of lands hereby leased to re-enter and the same and every part thereof, and all improvements, and all the rights, liberties, privileges and franchises aforesaid to have, possess and enjoy.

And the said State doth hereby covenant and agree to and with the said The Morris and Cumings Dredging Company its successors and assigns, that a conveyance will be made to the said The Morris and Cumings Dredging Company its successors and assigns of the said lands, rights, liberties, privileges and franchises, or any part thereof may desire, free and discharged of the whole or of an equitable portion of the said rent, on its or their paying to the said State the sum of sixty thousand, four hundred and eighty dollars or an equitable portion thereof, and upon application duly made therefor.

And the said State also covenants to and with the said The Morris and Cumings Dredging Company, its successors and assigns that the said State will not make or give any grant, license, power or authority to any other person or corporation affecting lands under water in front of said lands hereby leased.

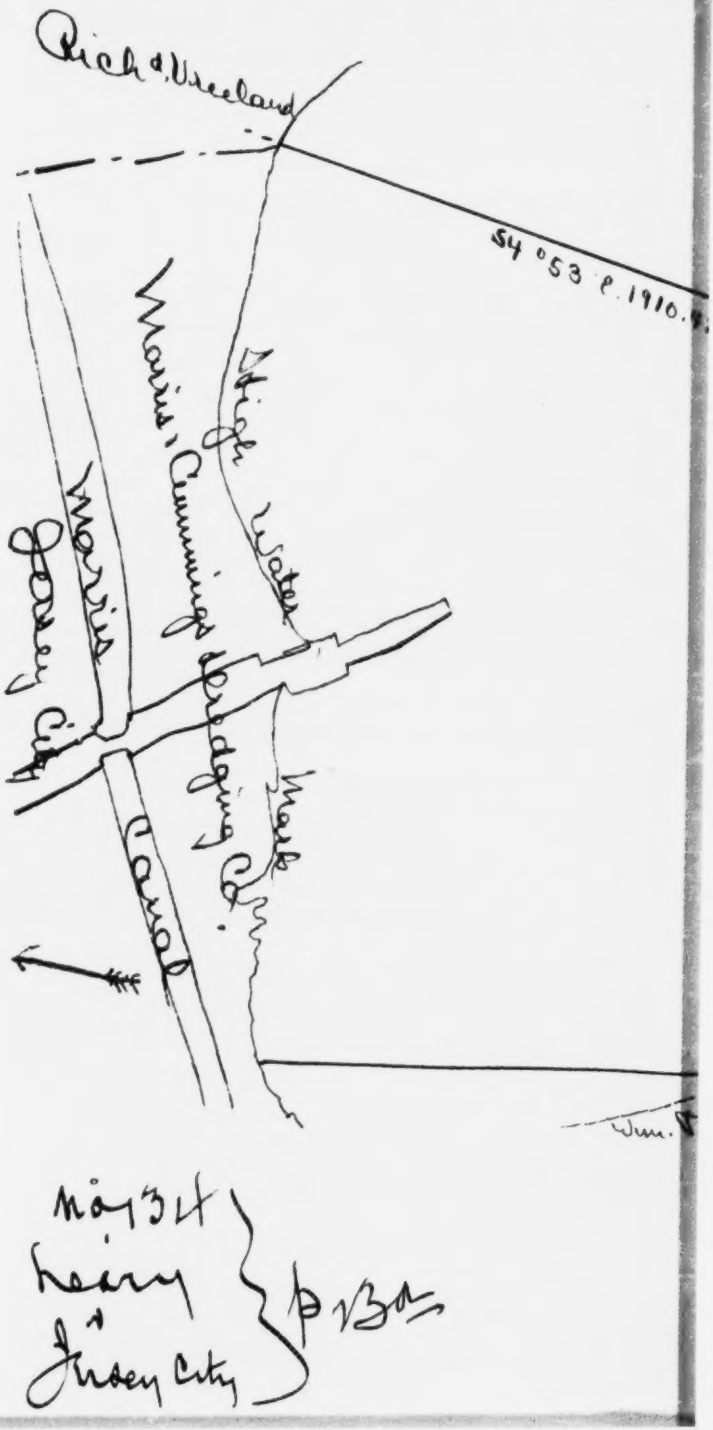
Provided also nevertheless that if the said party of the second part is not the owner of the lands adjoining the lands under water hereby conveyed then and in that case this conveyance and
23 lease so far as the same binds the State and all covenants herein on the part of the State shall be void.

In witness whereof, The said Commissioners have hereunto respectively set their hands and the Great Seal of the said State is hereunto affixed, and these presents have been signed by the said Governor, and attested by the Secretary of State, and the said The Morris and Cumings Dredging Company hath also hereto set hand and seal this thirtieth day of April, in the year eighteen hundred and eighty-one.

G. C. LUDLOW.
F. S. LATHROP.
BENNINGTON F. RANDOLPH.
THOMAS McKEEN.
AMZI DODD.

[Seal of the State of New Jersey.]

HENRY C. KELSEY.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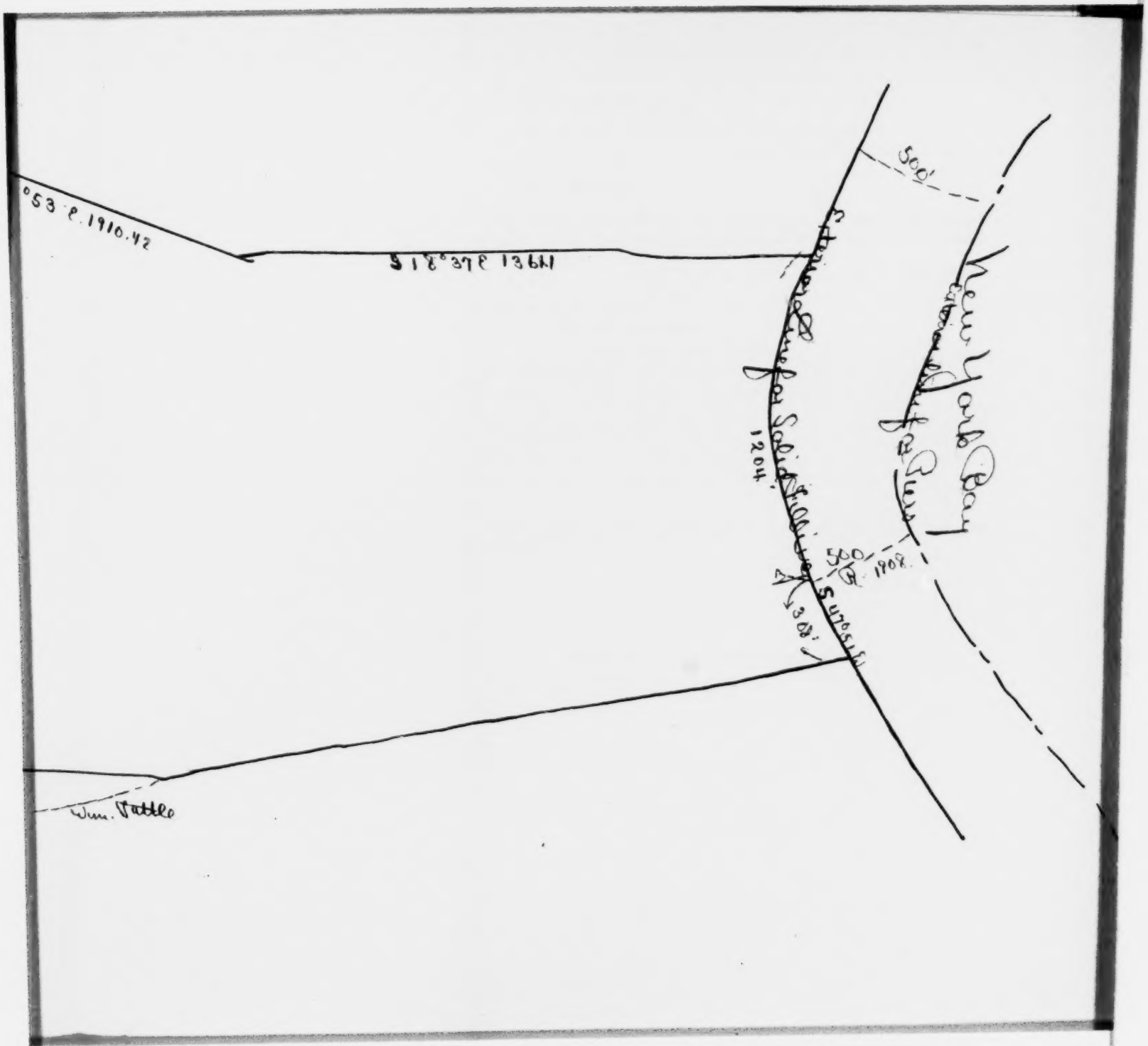
Morris Cummings Dredging Co.
High water
Morris
Jersey City
Canal
Mark
Wm.
May 31st
Henry
Jersey City
$ 1.25


S 18° 37' E 1364
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500'
Meander line for Solid Filling
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38'
Wm. Tattle

Witness:
R. C. BACOT.

[Seal of Morris & Cumings Dredging Company.]

JOSEPH CUMMINGS, *Pres't.*

Witness:
A. T. MORRIS.

The word "survey on 9th line of 1st page and the words "heirs" and also "heir, executors, administrators" where same occur erased before execution.

R. C. BACOT.

STATE OF NEW JERSEY,
Hudson County, ss:

Be it remembered, That on this ninth day of May, A. D. eighteen hundred and eighty-one, before me, the subscriber, a Commissioner of Deeds for Hudson County, personally appeared Robert C. Bacot, of full age, who being duly sworn on his oath, saith that he saw Francis S. Lathrop, Bennington F. Randolph, Thomas McKeen and Amzi Dodd the within named commissioners, sign and deliver the within lease as their voluntary act, and that he, the said Robert C. Bacot, thereupon subscribed his name as the attesting witness.

R. C. BACOT.

Sworn and subscribed before me at Jersey City the day and year aforesaid.

JOHN V. BACOT,
Com'r as Aforesaid.

(Here follows diagram marked page 23*a*.)

24 EXHIBIT TWO.

Know all men by these presents that the Morris & Cumings Dredging Company, a body corporate, of the State of New York, in consideration of One Dollar, lawful money of the United States, to it in hand paid before the sealing and delivery hereof and other good and valuable consideration has sold, assigned, transferred and set over, and by these presents does sell, assign, transfer and set over unto Daniel J. Leary of the Borough of Manhattan in the City, County and State of New York, his executors, administrators and assigns, all its right, title, interest and privileges under a certain indenture of lease bearing date the thirtieth day of April, Eighteen hundred and eighty-one, made by the State of New Jersey to the said Morris & Cumings Dredging Company in, to and concerning the lands therein described as leased by said State to said Company as follows:

All that tract of land under the waters of the Bay of New York in the City of Jersey City in the County of Hudson and State of New Jersey described as follows: Beginning at high water mark on the west shore of the Bay of New York at the southwesterly corner of lands now or formerly of Richard Vreeland; and from thence running south — degrees and fifty three minutes east nineteen hundred and ten and 42/100 feet; thence south eighteen degrees and thirty-seven minutes east thirteen hundred and sixty-one and 1/10 feet to the exterior line for solid filling as laid down on the "Plan for an equal apportionment among riparian owners of lands under water between Cavan Point and Constables Hook, New York Bay dated January 7th, 1871," and filed in the office of the Secretary of State of New Jersey at Trenton made by the Commissioners appointed under the authority of the act entitled "An act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State" approved April 11th, 1864, and the Supplements thereto; thence westerly along said Exterior Line for solid filling curving to the South with a radius of nineteen hundred and eight feet, twelve hundred and four feet to a point; thence still along said exterior line for solid filling south forty seven degrees and fifty-one minutes west, three hundred and eight feet; thence north thirty-three degrees and eleven minutes west eighteen hundred and thirty-six and 7/10 feet; thence north twenty degrees and thirty-four minutes west eleven hundred and sixty six and 4/10 feet to the high water mark of the westerly shore of the Bay of New York at the southeasterly
25 corner of lands of William Tuttle; thence northeasterly along the high water mark of said westerly shore of the Bay of New York to the place of beginning.

And also the right, liberty, privilege and franchise to exclude the tide water from so much of the lands above described as lie under tide water by filling in or otherwise improving the same and to appropriate the land above described to his exclusive private use.

And also all and singular the lands under water between the above

mentioned exterior line for solid filling and the exterior line for piers mentioned in said act first recited and the most easterly line of the above described tract extended southerly to said pier line and the most westerly line of the above described tract extended southerly to said pier line.

And with the right, liberty, privilege and franchise of building piers alone on the land last above described, that is to say that which lies between the said exterior lines already fixed above mentioned.

And if and when said exterior lines shall be fixed at any other points or places further out into said Bay, also any and all lands lying under water between the new exterior line or lines for solid filling and within said easterly and westerly lines extended southerly to said new pier line or lines with the right, liberty, privilege and franchise of building piers alone upon the land last mentioned. Together with all the right so far as the upland from time to time made shall adjoin the navigable water to the perquisites of wharfage and other like tolls and charges.

To take, to have and to hold, use, exercise and enjoy the said lands and premises, and all the rights, liberties, privileges, franchises and perquisites aforesaid, exercisable within and over, or with reference to the same, unto the said Daniel J. Leary, his executors, administrators and assigns to and for the said several uses, intents and purposes, and in the manner and form that they were granted by said State. Not including, however, any of the upland adjacent to the said lands under water above described.

Subject, however, to the payment of the annual rent of Forty two hundred thirty three dollars and sixty cents ($4233.60) to be paid to the State of New Jersey under the provisions of said lease, in two equal half yearly payments on the thirtieth days of April and October of each year, which payment the said Daniel J. Leary hereby assumes and agrees to pay.

Subject also to the lien of a certain indenture of mortgage
26 made by said Morris & Cumings Dredging Company to Mary C. Leary, dated September first, Eighteen hundred and ninety-one, and recorded in the Hudson County Register's office in liber 271 of Mortgages, pages 163, securing the payment of the sum of One hundred thousand dollars ($100,000).

In witness whereof the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its President and attested by its Secretary, they being thereunto duly authorized by its Board of Trustees, this twenty-fourth day of February, Nineteen hundred and four.

MORRIS & CUMINGS DREDGING COMPANY,
By GEORGE LEARY, *President.*

Attest:
HENRY H. PETZE, *Secretary.*

STATE OF NEW JERSEY,
County of Hudson, ss:

Be it remembered that on this twenty-sixth day of February, Nineteen hundred and four, before me personally appeared Henry H. Petze, who being by me duly sworn, on his oath says, that he is the secretary of the Morris & Cumings Dredging Company; that he well knows the corporate seal of said Company and that the seal affixed to the foregoing instrument is the seal of said Company, that the same was so affixed by deponent by authority of the Board of Trustees of said Company, and said deed signed and delivered by George Leary, who was at the date *and* execution thereof the president of said Company, in the presence of this deponent as the voluntary act and deed of said Company, and that deponent thereupon signed the same as subscribing witness thereto.

HENRY H. PETZE.

Sworn and subscribed before me the day and year aforesaid.

JOHN M. ENRIGHT,
Master in Chancery of New Jersey.

Received in the office of the Register of the County of Hudson, N. J., at 2:47 o'clock P. M., March 4th, 1904, and recorded in Book 855 of deeds for said County on page 628, etc.

JAMES C. CLARK, *Register.*

Indexed under County Block No. 355.

27 EXHIBIT THREE.

Office of City Collector, Room No. 1, City Hall.

JERSEY CITY, Apr. 19, 1906.

Sale No. 13535.
Supposed Owner—Daniel J. Leary.

Dear Sir: By resolution of the Board of Finance, passed Mar. 23, '06, I am directed to sell, under Section 13, Chapter 112, Laws of 1886, and amendments thereto, certain lots and plots of land in arrears for taxes due for two years and over, and assessments, as per sale No. 43, filed with the Board of Finance.

I find Lot (New 4B & 7B) Block (New 1507) Ward—.
(Old 4B & 7B) (Old 1501)
1502)

Taxes.

Year.	Amount.
1883	$1,410.40
1884	1,281.40
1885	3,084.68
1886	2,763.60
1887	7,741.44

1888	6,007.68
1889	5,644.80
1890	5,322.24
1891	6,106.00
1892	6,106.00
1893	5,912.50
1894	5,912.50
1895	5,912.50
1896	5,891.00
1897	6,213.50
1898	6,149.00
1899	6,106.00
1900	11,336.40
1901	11,648.00
1902	11,564.80

The sale will take place May 29, '06, and the first advertisement will appear about Apr. 28, '06.

Your attention is respectfully called to the following facts: That this law makes my duty imperative; the sale is absolute,
28 and unless you pay the amount due the title will certainly pass from you. Immediate payment will save cost of advertising and other expenses.

Very respectfully,

EDWARD FRY, *City Collector.*

Bring this notice when payment is made.

Exhibit Four.

(Copy of Advertisement of Tax Sale No. 43, showing advertisement for sale of lands of Daniel J. Leary.)

Exhibit Five.

Agreement made and entered into, by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, Commissioners duly appointed on the part and behalf of the state of New York, in pursuance of an act of the legislature of the said state entitled "An act concerning the territorial limits and jurisdiction of the state of New York and the State of New Jersey," passed January eighteenth, eighteen hundred and thirty-three, of the one part, and Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer, commissioners duly appointed on the part and behalf of the state of New Jersey, in pursuance of an act of the legislature of the said state, entitled "An act for the settlement of the territorial limits and jurisdiction between the states of New Jersey and New York, passed February sixth, eighteen hundred and thirty-three, of the other part.

Art. 1. The boundary line between the two states of New York

and New Jersey, from a point in the middle of Hudson river, opposite the point on the west shore thereof, in the forty-first degree of north latitude as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the Bay of New York, of the water between Staten Island and New Jersey, and of Raritan Bay, to the main sea, except as hereinafter otherwise particularly mentioned.

Art. 2. The State of New York shall retain its present jurisdiction of and over Bedlow's and Ellis' Islands, and shall retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that state.

Art. 3. The state of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York
29 and of and over all the waters of Hudson River, lying west of Manhattan island, and to the south of the mouth of Spuytenduyvel creek, and of and over the lands covered by the said waters to the low-water mark on the westerly or New Jersey side thereof, subject to the following rights of property and jurisdiction of the state of New Jersey, that is to say:

(1) The state of New Jersey shall have the exclusive right of property in and to the land under water, lying west of the middle of the Bay of New York and west of the middle of that part of the Hudson River which lies between Manhattan island and New Jersey.

(2) The state of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of the said state, and of and over all vessels aground on said shore or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the state of New York, which now exist or which may hereafter be passed.

(3) The state of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters; provided that the navigation be not obstructed or hindered.

Art. 4. The state of New York shall have exclusive jurisdiction of and over the waters of the Kill von Kull, between Staten island and New Jersey, to the westernmost end of Shooter's island, in respect to such quarantine laws and laws relating to passengers as now exist, or may hereafter be passed under the authority of that state, and for executing the same; and the said state shall also have exclusive jurisdiction, for the like purposes of and over the waters of the sound from the westernmost end of Shooter's island to Woodbridge creek, as to all vessels bound to any port in the said state of New York.

Art. 5. The state of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten island and New Jersey, lying south of Woodbridge creek, and of and over all the waters of Raritan Bay, lying westward of a line drawn from the lighthouse of Prince's bay to the mouth of Matavan creek, subject to the following rights of property and jurisdiction of the State of New York, that is to say:

(1) The state of New York shall have the exclusive right of

property in and to the land under water lying between the middle of the said waters and Staten Island.

30 (2) The state of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore or fastened to any such wharf, or dock, except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the state of New Jersey, which now exist or which may hereafter be passed.

(3) The state of New York shall have the exclusive right of regulating the fisheries between the shore of Staten island and the middle of the said waters; provided that the navigation of the said waters be not obstructed or hindered.

Art. 6. Criminal process issued under the authority of the state of New Jersey against any person accused of an offence committed within that State, or on board of any vessel being under the exclusive jurisdiction of that state, as aforesaid, or committed against the regulations made or to be made by that state, in relation to the fisheries mentioned in the third article, and also civil process issued under the authority of the state of New Jersey against any person domiciled in that state, or against property taken out of that state to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the state of New York, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the state of New York, or fastened to a wharf adjoining thereto; or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the state of New York.

Criminal process issued under the authority of the state of New York against any person accused of an offense committed within that state, or committed on board of any vessel, being under the exclusive jurisdiction of that state as aforesaid, or committed against the regulations made or to be made by that state in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the state of New York against any person domiciled in that state, or against property taken out of that state to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the state of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the state of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the state of New Jersey.

31 Art. 8. This agreement shall become binding on the two states when confirmed by the legislatures thereof, respectively and when approved by the congress of the United States. Done in four parts (two of which are retained by the commissioners of New York, to be delivered to the governor of that state, and the other two of which are retained by the commissioners of New Jersey, to be delivered to the governor of that state) at the city of New York, this sixteenth day of September, in the year of our Lord one

thousand eight hundred and thirty-three, and of the independence of the United States, the fifty-eighth.

B. F. BUTLER.
PETER AUGUSTUS JAY.
HENRY SEYMOUR.
THEODORE FRELINGHUYSEN.
JAMES PARKER.
LUCIUS Q. C. ELMER.

Circuit Court of the United States, District of New Jersey.

In Equity.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY and EDWARD FRY, City Collector of the City of Jersey City, Defendants.

On Bill.

Answer.

(Filed October 23d, 1906.)

The Answer of the Mayor and Aldermen of Jersey City and Edward Fry, City Collector of the City of Jersey City, to the Bill of Complaint of Daniel J. Leary.

The defendants, the Mayor and Aldermen of the City of Jersey City, and Edward Fry, City Collector of the City of Jersey City, answering the bill of complaint of the said Daniel J. Leary, say:

That the Mayor and Aldermen of the City of Jersey City is
32 a municipal corporation created by and existing under the laws of the State of New Jersey, and that the said Edward Fry is a resident and a citizen of the City of Jersey City, and is the City Collector of the City of Jersey City, and as such City Collector is the tax collecting officer of Jersey City, under and by virtue of the tax laws of the State of New Jersey, and has full power and authority to make sale of lands for tax arrearages as set forth in the bill of complaint.

These defendants further answering say, that it is true as set forth in the bill of complaint that the Mayor and Aldermen of the City of Jersey City claim to have assessed and levied taxes against the lands described in the bill of complaint for the years and in the amount stated in the bill of complaint.

And they further say, that none of said taxes or interest accrued thereon have been paid to the Mayor and Aldermen of Jersey City by the owners of the premises described, or by any one having an interest therein, or claiming to exercise the control thereof, or the right of possession thereof; that the said taxes were assessed against

the property in question by the proper taxing officers of the Mayor and Aldermen of Jersey City under the authority vested in said officers by the charter of Jersey City and the tax laws of the State of New Jersey, to which laws reference is here made.

And the defendants further say, that it is true as charged in said bill of complaint that the Mayor and Aldermen of Jersey City claim liens or encumbrances upon the said lands for the amount of such taxes, with interest at ten per cent (10%), and further claim that the said liens or encumbrances are paramount liens, and that the interest of the complainant in said lands is thus subject and subsequent to said liens or encumbrances.

And they further say, that other than this suit there are no suits pending instituted by the complainant, or any other person having an interest in said lands, to test the validity of said taxes and encumbrances.

The defendants further say, that it is true as charged in said bill that on or about the nineteenth day of April notices were issued by the defendant, Edward Fry, to the effect that it was his intention as City Collector of the City of Jersey City to sell said lands for tax arrearages; and it is further true as charged in said bill that the said defendant, Edward Fry, has caused to be advertised and published notices that he intended selling and exposing for sale at public auction the said lands and premises for the purpose of procuring the payment of the said taxes and assessments in accordance with the law of the State of New Jersey, as set forth and referred to in the bill of complaint.

33 These defendants further answering deny the charges and allegations in said bill of complaint to the effect that the said lands so described are not subject to taxation under the laws of the State of New Jersey, and they deny that the said lands and premises are not subject to taxation by the Mayor and Aldermen of Jersey City; and they further deny that the proceedings pending for the sale of said lands, set forth in said bill of complaint, are in violation of the constitutional rights of the complainant, or any one else, and they deny that said proceedings will operate to deprive the complainant of equal protection of the laws within the meaning of the first section of the fourteenth amendment of the Constitution of the United States, and they deny the charges and claims in said bill that said lands so described are not within the territorial limits of Jersey City, and they deny the soundness of the legal conclusions and deductions set forth in said bill of complaint, whereby it is contended that the taxation of said premises by the Mayor and Aldermen of Jersey City operates to take property for public use without just compensation, or operates to harass the complainant, or any one else in the proper enjoyment of the right of possession or use of the premises described, and they deny the invasion of any constitutional rights of the complainant in the premises, and they deny the allegations of said bill that said lands and premises are not within the jurisdiction of the State of New Jersey, and are not subject to the sovereignty of said State; and they deny the allegation that prior to the year eighteen hundred and thirty-three (1833) the geograph-

ical limits of the State of New Jersey extended only to a high water mark on the New Jersey shore of the Hudson River and New York Bay, and in support of their denial these defendants beg leave to refer to the various acts, statutes, ordinances, and ancient and public documents bearing upon said matters; and they deny that by virtue of any agreement set forth in the bill of complaint, that the jurisdiction and sovereignty over the said lands vested in the State of New York; and they deny that by virtue of such agreement the State of New Jersey, or the Mayor and Aldermen of Jersey City, were divested of their right to tax any of the lands in question.

And they further deny the allegation in said bill of complaint that the taxes and liens, for the collection of which these defendants threatened to sell the said lands and premises, are invalid and of no force and effect.

34 These defendants further answering, deny that the lands and premises mentioned and described receive no governmental benefit from the municipality of Jersey City.

And these defendants further say, that they admit that it is the intention of the Mayor and Aldermen of Jersey City to continue to assess said property for taxes, and that assessments thereof have been made thereon annually, as set forth in the bill of complaint, and that an assessment has been made thereon for the year nineteen hundred and six; and they admit that the annual tax charged against said property is over two thousand dollars ($2,000.00), and that the value of complainant's rights in said lands and premises exceeds the sum of two thousand dollars ($2,000.00), these defendants charging and insisting that the said rights and interests are worth many hundreds of thousands of dollars, constituted a portion of the most valuable land in the United States, being lands having a frontage upon and being immediately adjacent to the Harbor of the City of New York, and said lands being immensely valuable for railroad, warehouse, and other similar purposes, and as an evidence of the value thereof these defendants direct the attention of the Court to the fact that the land immediately adjacent thereto, to the south, owned and controlled by the Pennsylvania Railroad Company and its ally companies, has been undergoing vast improvement by said Company for several years last past, said Company investing in the development thereof upwards of several millions of dollars, and said lands and premises being a part of the freight terminal of the entire Pennsylvania Railroad system; that said lands immediately adjacent to the lands involved in this cause and so owned and possessed by the Pennsylvania Railroad Company have been filled in and built upon to a distance of almost two (2) miles from what was formerly the high water mark referred to in the bill of complaint, and that said properties have been for some time past and are now being taxed for the municipal purposes of Jersey City under the laws of the State of New Jersey.

And these defendants in further answering say, that the said lands do not belong to the State of New Jersey, but by virtue of lease and grants heretofore made by the State of New Jersey such lands are vested in the complainant, or some other person or persons, and are not by virtue of said grants, or any of them exempt from taxation.

And these defendants in further answering deny that it is impossible for the complainant to ascertain the proportion of taxes chargeable against the property described in the bill of complaint;
35 these defendants charging the truth to be that under the tax laws of the State of New Jersey, to which these defendants beg leave to refer, taxes may be apportioned at any time upon demand made to the Board of Tax Commissioners *of* the Mayor and Aldermen of Jersey City. And these defendants charge that no such application has ever been made by the complainant or any one for him.

And these defendants in further answering say, that said lands are within the limits of Jersey City.

And these defendants in further answering deny that prior to the year eighteen hundred and thirty three, or at any time subsequent thereto, the geographical limits of the State of New Jersey extended only to low water mark on the New Jersey shore of the Hudson River and New York Bay; these defendants charging and insisting that the geographical limits of the State of New Jersey extend to the centre of said Hudson River and New York Bay; and they deny that the agreement referred to in the bill of complaint, stated to have been entered into by the State of New Jersey and the State of New York, relating to the waters of the New York Bay and the Hudson River, changed or altered the rights of the State of New Jersey, or the right of the municipality of Jersey City to tax the lands in question,—the said agreement, as by reference thereto will show, having related entirely and exclusively to proceedings incident to the prosecution of crimes and offences against the laws committed upon said waters, and the said agreement being entered into between said states for the mutual protection of the inhabitants of the said two states. And it was expressly provided in said agreement that the State of New Jersey was and should be, for all intents and purposes, the proprietor and legal owner of the lands under water extending to the middle of the said Hudson River and New York Bay. And these defendants deny that in the making of said agreement the State of New Jersey relinquished its right or privilege to tax the said lands described in the bill of complaint.

And these defendants in further answering say, that a large portion of the lands described in the bill of complaint are what is known as filled in lands, and are now and have been for some time, as a result of said filling in, a part of the main land of the State of New Jersey, and a large portion of said lands is in no sense under water, and has been for a long time and is now available for building purposes, railroad purposes, or any business purposes, and that under the laws of the State of New Jersey, to which these defend-
36 ants beg leave to refer, the complainant has full and ample power to utilize said lands for any purpose whatsoever, and that the said lands may be utilized in the same manner that the lands of the Pennsylvania Railroad Company immediately adjoining thereto are used; and the said complainant, or his assignors have full and complete control thereof, to the exclusion of all other persons or authorities, and exercises full and absolute ownership thereof, and have full right to exclude any and all persons therefrom.

And these defendants in further answering say, that the agreement referred to in the bill of complaint, made by the States of New York and New Jersey, has been fully and completely construed by the Supreme Court of the State of New Jersey in an opinion which appears in 70 N. J. Law Reports, page 81, and by the Court of Errors and Appeals of the State of New Jersey, 61 Atlantic Reporter, page 1118, copies of which opinions are hereto annexed, and to which these defendants beg leave to refer.

These defendants therefore claim that the contentions of the said complainant that the lands described in the bill of complaint are not subject to taxation by the City of Jersey City, and that the title of the complainant is not of the character to warrant it being subject to taxation, and that the taxes levied by the Mayor and Aldermen of Jersey City, as set forth in the bill of complaint, are not valid and binding taxes upon said property, are without foundation in law or in fact.

And these defendants pray that they may be hence dismissed with their reasonable costs in this behalf sustained.

ROBERT CAREY,
Solicitor for Defendants.

CENTRAL RAILROAD OF NEW JERSEY
v.
MAYOR AND ALDERMEN OF JERSEY CITY.

70 N. J. Law, Page 81.

Argued June 8, 1903. Decided Nov. 9, 1903.

1. The agreement of 1833 between the Commissioners representing the States of New Jersey and New York, having been confirmed by the Legislatures of those States, respectively, and approved by the Congress of the United States, established the boundary line between this State and the State of New York in the middle of the Hudson river and of the bay of New York.

2. The sovereignty of the State of New Jersey is co-extensive with the territorial limits thus established, subject only to such exceptions and to such extra-territorial jurisdiction as was by the said agreement conceded to the State of New York.

37 3. The word "jurisdiction" is not used in article 3 of this agreement in the sense of sovereignty.

4. The power to tax the lands under the tidewater of New York Bay, within the territorial limits established by the agreement of 1833, is in the State of New Jersey.

On Certiorari.

The following statute contains the text of the agreement or treaty (so called) of 1833 between the State- of New Jersey and New York:

"An act to ratify and confirm an agreement made between the commissioners appointed by the governor of the State of New York

and the commissioners appointed by the governor of the State of New Jersey, respecting the territorial limits and jurisdiction between the said states.

"Passed February 26th, 1834.

"Whereas, commissioners duly appointed on the part of the State of New York and Commissioners duly appointed on the part of New Jersey, for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two states, have executed certain articles, two copies for each state, which are contained in the following words:

"Agreement made and entered into, by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, Commissioners duly appointed on the part and behalf of the State of New York, in pursuance of an act of the legislature of the said state, entitled "An act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey," passed January 18th, 1833, of the one part, and Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer, commissioners duly appointed on the part and behalf of the State of New Jersey, in pursuance of an act of the legislature of the said state, entitled "An act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York," passed February 6th, 1833, of the other part.

"3. Art. I. The boundary line between the two states of New York and New Jersey, from a point in the middle of the Hudson River, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New York, of the water between Staten Island and New Jersey, and of Raritan Bay to the main sea, except as hereinafter otherwise particularly mentioned.

38 "4. Art. II. The State of New York shall retain its present jurisdiction of and over Bedlow's and Ellis' Islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned and now under the jurisdiction of that state.

"5. Art. III. The State of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York and of and over all the waters of the Hudson river lying west of Manhattan Island, and to the south of the mouth of Spuytenduyvel creek, and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and jurisdiction of the State of New Jersey, that is to say:

"1. The State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the bay of New York and west of the middle of that part of the Hudson River which lies between Manhattan Island and New Jersey.

"2. The State of New Jersey shall have exclusive jurisdiction of

and over the wharves, docks and improvements made and to be made on the shore of the said state, and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the State of New York, which now exist or which may hereafter be passed.

"3. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of said waters; providing that the navigation be not obstructed or hindered.

"6. Art. IV. The State of New York shall have exclusive jurisdiction of and over the waters of the Kill von Kull, between Staten Island and New Jersey, to the westernmost end of Shooter's Island, in respect to such quarantine laws and laws relating to passengers as now exist, or may hereafter be passed under the authority of that state, and for executing the same and the said state shall also have exclusive jurisdiction, for the like purpose, of and over the waters of the sound from the westernmost end of Shooters Island to Woodbridge creek, as to all vessels bound to any port in the said State of New York.

"7. Art. V. The State of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey, lying south of Woodbridge creek, and of and over all the waters of Raritan Bay, lying westward
39 of a line drawn from the lighthouse at Prince's bay to the mouth of Matavan creek, subject to the following rights of property and jurisdiction of the State of New York, that is to say:

"(1) The State of New York shall have the exclusive right of property in and to the land under water lying between the middle of said waters and Staten Island.

"(2) The State of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the State of New Jersey, which now exist or which may hereafter be passed.

"(3) The State of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters; provided, that the navigation of the said waters be not obstructed or hindered.

"8. Art. VI. Criminal process issued under the authority of the State of New Jersey against any person accused of an offence committed within that State, or on board of any vessel being under the exclusive jurisdiction of that state as aforesaid, or committed against the regulations made or to be made by that state in relation to the fisheries mentioned in the third article; and also civil process issued under the authority of the State of New Jersey against any person domiciled in that state, or against property taken out of that state to evade the laws hereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New York, unless such person or property shall be on board a vessel upon or fastened

to the shore of the State of New York or fastened to a wharf adjoining thereto; or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of New York.

"9. Art. VIII. Criminal process issued under the authority of the State of New York against any person accused of an offence committed within that State, or committed on board of any vessel being under the exclusive jurisdiction of that state as aforesaid, or committed against the regulations made or to be made by that state in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the State of New York against any person domiciled in that state, or against property taken out of that state to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest or such property shall be under seizure by virtue of process or authority of the State of New Jersey.

"10. Art. VIII. This agreement shall become binding on the two states when confirmed by the legislatures thereof, respectively, and when approved by the congress of the United States.

"Done in four parts (two of which are retained by the commissioners of New York, to be delivered to the governor of that state, and the other two of which are retained by the commissioners of New Jersey, to be delivered to the governor of that state), at the City of New York, this sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty three, and of the independence of the United States the fifty-eight.

B. F. BUTLER.
PETER AUGUSTUS JAY.
HENRY SEYMOUR.
"THEODORE FRELINGHUYSEN.
"JAMES PARKER.
"LUCIUS Q. C. ELMER.

"Therefore, that the aforesaid agreement, and every article, clause, matter and thing therein contained, shall be and the same is hereby fully and amply ratified and confirmed on the part of the State of New Jersey.

"Confirmed by New York February 5th, 1834.

"Approved by the congress of the United States June 28th, 1834.

"Revision of New Jersey, 1877, p. 1178."

Before Justices Garrison, Garretson, and Swayze.

For the prosecutor, John L. Conover, Frank Bergen, William D. Edwards and George Holmes.

For the defendants, Robert Carey and George L. Record.

The opinion of the court was delivered by

GARRISON, *J.*:

This writ brings up for review the taxes levied by Jersey City for the year 1899 upon certain lands of the prosecutor lying between the middle of New York bay and its low water line on the New Jersey shore. A single reason for annulling this tax is now pressed by the prosecutor, which is thus stated in the brief of counsel:

41 "The prosecutor insists that the land under water included in these lots and separately assessed for taxation is not subject to taxation by the taxing officers of Jersey City for the reason that it is not within the jurisdiction of New Jersey, although within the geographical boundaries of the state.

"There may be some question as to the technical boundaries of Jersey City under the various acts of the legislature creating the city, and its constituent parts, but the prosecutor raises no such question at this time.

"The question in this case depends upon the interpretation of article 3 of the compact or agreement made by the States of New York and New Jersey on September 16th, 1833, and confirmed by the legislature of both cities and approved by congress in 1834."

The compact thus referred to came in existence in this way: The grant by Charles II. to James, Duke of York, made in 1664, included the colonies of New York and New Jersey. James, being thus vested with both governmental and proprietary rights on each side of the waters that separated the two colonies, granted to Berkeley and Carteret New Jersey, describing it as "all that tract of land adjacent to New England and lying and being to the west of Long Island and Manhitas Island, and bounded on the east by the main sea and part of Hudson River, and hath upon the west the Delaware bay and to the northward as far as the northernmost branch of said bay or the river of Delaware, which is forty-one degrees and forty minutes of latitude and crosses over then in a straight line to Hudson's river in forty one degrees of latitude."

The point in this description to be noted is that New Jersey was bounded on the east by navigable water. Later, in 1674, after the Dutch restoration, these grants were renewed under the same description. In 1776, the quinti-partite deed was made by the grantees of James and their co-tenants to Sir George Carteret for the easterly part of the premises granted by James to Berkeley and Carteret, and in this instrument the land is described as "extending eastward and northward along the seacoast and the river called Hudson's river." In 1682, the widow of Carteret and others granted and released their interest to William Penn and eleven others, in which conveyance the land was described as in the quinti-partite deed; and in the year

following the Duke of York released to twenty-four proprietors any interest he might have in the territory, which was described as "bounded east by Hudson river." Later came the successful
42 war of the revolution, from which the colonies of New York and New Jersey emerged as free and sovereign states. From the facts thus epitomized there arose a controversy between the two states, based not upon any radical difference of opinion as to the effect of the grants that had been made during the colonial period, but rather upon divergent views as to the effect upon state sovereignty of the revolution itself.

The view advanced on behalf of New Jersey took, in 1806, the form of a statute, passed in that year, which, after reciting the historical facts above stated, declared as their result, that "the State of New Jersey became invested with full right and lawful authority to exercise jurisdiction in and over the Hudson River and the main sea and all the ports, harbors and havens lying adjacent to and along the Jersey shore and coast in such manner as belongs to a sovereign and independent state to use and exercise." Bloomf. L., p. 74. Under this statute commissioners were appointed to meet with commissioners to be appointed by New York to make an agreement to settle and determine the eastern boundary line of the State of New Jersey. Such a commission was appointed by New York, and met with the New Jersey commissioners at Newark in 1807, but no agreement was reached. Other conferences were held with like effect and sundry statutes were passed with a view of provoking an issue that might lead to a settlement of the questions involved. In 1829, no agreement having been reached, New Jersey filed a bill against New York in the Supreme Court of the United States, a summary of which may be found in 108 U. S. 406, 410. No appearance to this suit was ever entered by the State of New York, although efforts were made to compel such action upon her part. 3 Pet. 461; 5 Id. 283; 6 Id. 323. This bill was dismissed on February 15th, 1836, three years after the confirmation by each state of the so-called treaty of 1833.

From this summary may be gathered the general nature of the controversy between the two states as it stood in 1833, and of the nature and grounds of the claims advanced on behalf of each. What is chiefly to be noted is that each state bottomed its right upon an essential claim of sovereignty, which, on behalf of New York, was deduced from the one-time union of sovereignty and property in the Duke of York, and, on behalf of New Jersey, from the successful revolution against the king.

On the 6th of February, 1833, "An act for the settlement of the territorial limits and jurisdiction between the State of New Jersey and New York" was passed by the legislature of this state.
43 Pamph. L. 1833, p. 54. The language of this statute has so important a bearing upon the compact that grew out of it that its full text is given:

"An Act for the Settlement of the Territorial Limits and Jurisdiction Between the States of New Jersey and New York.

"Whereas the legislature of the State of New York have recently passed a law authorizing the governor of that state to appoint commissioners to meet commissioners on the part of this state, to negotiate and agree respecting the territorial limits and jurisdiction of the State of New Jersey and the State of New York:

"And whereas it is expedient and desirable that the difference heretofore existing on this subject should be amicably and speedily adjusted; therefore,

"Sec. 1. Be it enacted by the council and general assembly of this state, and it is hereby enacted by the authority of the same, that the governor of this state or the person administering the government of the same, be, and he is hereby authorized to appoint three commissioners, with full power on the part of New Jersey, to meet commissioners, appointed or to be appointed under or by virtue of a law of New York, passed January the eighteenth, eighteen hunderd and thirty-three, and with them to negotiate and agree respecting the territorial limits and jurisdiction between the said states as to them may seem just; and if by death, resignation, or otherwise, a vacancy do happen among those appointed by the State of New Jersey, the governor, or person administering the government of this state, is hereby authorized to supply the same.

"Sec. 2. And be it enacted, that the said commissioners on the part of the State of New Jersey, or a major part of them, shall have full power and authority to agree upon, settle and determine the limits of territory and jurisdiction between the said states, as to them may seem just; and their agreement in the premises, in writing, signed and sealed by the said commissioners of both states, or a majority of them, respectively, if made on or before the first Tuesday of January next, shall become binding in this state, when confirmed by the respective legislatures of New Jersey and New York and approved by congress.

"Sec. 3. And be it enacted, that the said commissioners shall meet at such time and place as they may agree upon, and shall each be entitled to receive five dollars per day for every day they may be employed in discharging their duties under this act, and fifteen cents per mile for every mile they shall necessarily travel in going
44 to, and returning from, any meeting of the said commissioners, to be paid by the treasurer, on the warrant of the governor or the person administering the government of this state.

"Sec. 4. And be it enacted, that the governor or person administering the government of this state, shall transmit to the governor of New York a copy of this act.

"Passed February 6th, 1833." Pamph. L. 1833, p. 54.

A statute of like import and in almost identical language was passed at about the same time by the assembly of New York.

The commissioners appointed on behalf of New Jersey, Theodor Frelinghuysen, James Parker and Lucius Q. C. Elmer, met with

those appointed on behalf of New York, and in September of that same year came to an agreement that was reduced by the commissioners to the form of written articles that were to be binding upon the two states when confirmed by the legislatur- thereof, respectively, and approved by the congress of the United States. Such confirmation and such approval followed in due course. Laws of N. Y. 1834, p. 8; Pamph. L. 1834, p. 118; 4 U. S. Stat. at L., p. 808.

The articles constituting this compact are printed in full in a prefatory statement to this opinion, and the interpretation of their language, in so far as it bears upon the right of New Jersey to exercise the sovereign power of taxation over the lands of the prosecutor, is the sole question now presented for decision.

The question is one of first impression, being entirely distinct from the right to exercise civil or criminal jurisdiction, which has hitherto been the only aspect in which the compact has been presented for judicial consideration. With respect to the right last mentioned, namely, that of administering jurisprudence over the territory declared by the compact of 1833 to be within the boundaries of the State of New Jersey, it was held by this court, in the case of State v. Babcock, 1 Vroom 29, that an indictment for a nuisance by placing wrecks in the Hudson river below low water-mark on the New Jersey shore would not lie in this state, upon the ground that by the compact in question exclusive jurisdiction over offences in or upon the said waters or the land under them resided in the State of New York. Later, the Court of Appeals of the State of New York, in the case of People v. Central Railroad of New Jersey, 42 N. Y. 283, held that the courts of New York had no jurisdiction to abate by injunction nuisances extending out into the bay or river from the New Jersey shore, upon the ground that by the compact in question the jurisdiction conferred upon New York over the waters of the bay and river was a qualified and limited jurisdiction for police and sanitary purposes, or to protect the interests of commerce, and was not designed to give to New York any right to interfere with the complete political or governmental jurisdiction of New Jersey as a sovereign state over her own soil and its appurtenances, and of and over every description of property within her territorial limits, which ruling was followed by the same court in 1891, in the case of Ferguson v. Ross, 126 N. Y. 459. In the case of 42 N. Y., two of the seven judges who constituted the court dissented upon the main proposition upon which the case was decided. This dissent was voiced by Chief Justice Earl, and is summed up in the proposition elaborated in his dissenting opinion that the word "Jurisdiction," in article 3 of the compact of 1833, was used as synonymous with sovereignty, and not as a term of jurisprudence. The five judges who made up the majority of the court not only decided that the word "jurisdiction" was used as a term of jurisprudence, but held further that it was designed to confer only a qualified and limited juridical authority of the sort that is above described in language taken from the prevailing opinion. It is not now necessary or proper to decide whether the term was employed by the commissioners in

a broad juridical sense or with the qualified meaning placed upon it by the majority opinion of the New York court. All that is to the present purpose is that its equivalency to sovereignty or governmental jurisdiction was distinctly disavowed, and that the position there taken by the two dissenting judges in the position that must be now successfully maintained by the plaintiff in certiorari. The present case, in fact, turns upon the precise point developed by the divergent views expressed in the New York case, namely, whether the word "jurisdiction" was used in article 3 of the compact of 1833 as equivalent to state sovereignty or in a less inclusive sense. The reasons, pro and con, elaborated in the opinions to which reference has been made, need not be here repeated. There is, however, one view of the matter not touched upon in either of these opinions that greatly strengthens, in my judgment, the position taken in the majority opinion.

The brief historical review of the controversy between the two states has made it apparent that the question at issue between them was in its ultimate essence one of sovereignty, and that the settlement of this question was the one pressing matter, although other questions were to be settled as well. That this was recog-
46 nized by each state in providing a modus of settlement is evident from the language of the statutes by which the respective commissioners were appointed and empowered. Upon this point the titles of these acts are suggestive, that of New York being "An act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey," while that of New Jersey was "An act for the settlement of the territorial limits and jurisdiction between the States of New Jersey and New York," and in the enactments themselves the same duality of objects to be settled is at all times observed in the statutes in each state. In plain terms, therefore, the commissioners were empowered to negotiate respecting two things, and thereby to settle two things, namely, limits of territory and jurisdiction. Nowhere is there any intimation that those two were deemed to be one and the same thing. Bearing this fact in mind, and that the main point in controversy was that of sovereignty, the compact itself may be read with a reasonable expectation that the main point submitted to the commissioners was not lost sight of, and also that both of the powers reposed in them were duly executed. This expectation is fully justified by the terms of the compact. Article 1, in clear and explicit language, fixed the boundary line between the states as the middle of the Hudson river and the bay of New York. This disposed of the question of territorial limits, and had this been the only matter submitted to the commissioners would have exhausted their authority in the premises. They were, however, empowered to deal also with jurisdiction. Hence the qualification with which article 1 concluded, "except as hereinafter otherwise particularly mentioned." To fulfill the conditions of this clause the matters to be particularly mentioned must be "otherwise"—that is, must alter or modify what has gone before; and secondly, must be capable of exception—that

is, of subtraction from it—hence must be less than what had preceded. Articles 2 and 3 fulfill with precision each of these conditions, and from their position and context admit of no other rational interpretation than that they are the excepted matters to be particularly mentioned, by which the otherwise unqualified concession of territorial limit was to be modified and abridged. This was effected in article 2 by providing that New York should retain its jurisdiction over certain islands lying in the waters mentioned in article 1, which article 3 continued the subtracting process by stipulating that New York should enjoy exclusive jurisdiction over all the waters included within the territorial limits of New Jersey up to low-
47 water mark on the New Jersey shore, subject to certain property rights and jurisdictions which are excepted in favor of New Jersey, which thus constituted an exception to an exception. The remaining articles are not directly pertinent.

It will have been noted that sovereignty, eo nomine, is not mentioned in these articles, and yet no one contends that it was not disposed of by them. There are, in fine, two declarations contained in these articles, either of which may carry sovereignty, namely, territorial boundary and jurisdiction, the first by imperative implication, the other by signifying governmental jurisdiction, in which case it is a synonym for sovereignty.

The relation between the territorial limits of a state and its sovereignty is thus spoken of by Judge Cooley, in the opening section of his work on Constitutional Limitation: "The sovereignty of a state commonly extends to all the subjects of government within the territorial limits occupied by the associated people who compose it, and, except upon the high seas, which belong equally to all men, like the air, and no part of which can rightfully be appropriated by any nation, the dividing line between sovereignties is usually a territorial line. In American constitutional law, however, there is a division of the powers of sovereignty between the national and the state governments by subjects; the former being possessed of supreme, absolute and uncontrollable power over certain subjects throughout all the states and territories, while the states have like complete power within their respective territorial limits over other subjects." Cooley Const. Lim., p. 2.

It is further a matter of common knowledge that in the creation of new states it is by the exact fixation of their territorial limits and not by the precise enumeration of their governmental powers that sovereignty arises and is exercised. Jurisdiction, as has been said, may mean governmental jurisdiction, as distinguished from juridical, in which case it is the exact equivalent of sovereignty. Either term, therefore, state boundary or state jurisdiction, may connote sovereignty, and under the one or the other of these heads the matter of sovereignty was unquestionably disposed of in the articles under consideration. Whatever divergency of view exists as to the force and effect of the compact in this respect must be ascribed to the elasticity of the term "jurisdiction." Regarded, however, as a synonym for sovereignty, which must be the contention here, the force of the word is greatly impaired in the present instance by

the adjective "exclusive," as so flagrant a redundancy as "exclusive sovereignty" should not lightly be imputed to the framers of these articles.

48 The grounds for thinking that sovereignty is disposed of under the head of "Territorial Limits" rather than under that of "Jurisdiction" are several and various. In the first place, the legislative direction to each set of commissioners was to deal with both territorial limits and jurisdiction, which was the merest tautology if the jurisdiction referred to was in itself sovereignty. In the next place, the commissioners did, in several instances, deal with jurisdiction in its judicial sense, a matter to which they were in nowise empowered, if the term "jurisdiction," used in the statutes under which they were appointed, was governmental. Furthermore, the facts that sovereignty was the main point at issue, that territorial limits preceded jurisdiction in the enumeration of the commissioners' authority and that the first article dealt conclusively with the question of territorial limits, are all indications that, in dealing with this power, the commissioners were settling the main point at issue. More conclusive still is the circumstance that, having in article 1 settled the matter of territorial limits, the jurisdiction with which the commissioners dealt was excepted from it, which is perfectly rational if the jurisdiction was juridical, and hence a mere incident of sovereignty; but was palpably irrational, not to say inconceivable, if jurisdiction was of itself that very sovereignty.

The significance of the title to the act confirming the agreement is to be noted, which, as well as the recitals, mentions jurisdiction as a distinct subject covered by the agreement. See prefactory note.

A further ground is the conclusive decision of the Court of Appeals of New York, adverse as it is, to the claim now advanced on behalf of the sovereignty of that state, pronounced first in the case of People v. Central Railroad Company of New Jersey, already cited, in which the present prosecutor was the successful defendant, and later affirmed by the same court in the case of Ferguson v. Ross, 126 N. Y. 459. In the earlier cases, Justice Smith, announcing the reasoning of the court, said: "Whatever doubt may have existed before on the subject, immediately upon the adoption and ratification of this convention or treaty the sovereignty and jurisdiction of the respective states extended and attached to that portion of the said river and other waters assigned to each state, respectively, by said article, up to the line of the boundary therein fixed and established;" and in the latter opinion, Judge Andrews, who spoke for a unanimous court, said: "The purpose of vesting exclusive jurisdiction over these waters in the State of New York was

49 to promote the interests of commerce and navigation, which would, as supposed, be best subserved by giving to this state the exclusive control and regulation of the waters of the bay and harbor of New York." Indubitably, therefore, the State of New York, through its highest judicial tribunal, has expressly disowned any interpretation of the compact in question by which the sovereignty of New Jersey over the territorial limits granted by the compact of 1833 is to be in anywise impugned.

Lastly, due weight must be given to the statement of Judge Elmer, himself one of the commissioners, that what was conceded of the State of New York was "the exclusive jurisdiction over offences in and upon the waters or the land covered by the waters, outside of low water mark." State v. Babcock, 1 Vroom, 29. Indeed, it is not difficult to read between the lines of this extrajudicial statement that if the commissioners had not been empowered to deal with jurisdiction as distinct from sovereignty, and as a compensating factor for the concession New York was expected to make respecting territorial limits, it was in the highest degree improbable that any agreement whatsoever could have been reached. This suggestion, which is more than hinted at by Judge Elmer, explains much that is otherwise obscure, indicating among other things, that the jurisdiction, touching which the commissioners negotiated, was neither sovereignty itself nor even such jurisdiction along as is incident to sovereignty; but that it was, in great part, extra-territorial jurisdiction, which was to be and was in fact conceded in return for reciprocal concessions. This obiter declaration of Judge Elmer, while not cited as authority for any position taken, is an added reason for holding that jurisdiction, as that term was employed by the commissioners, was not the equivalent of sovereignty, which is the precise point upon which the present litigation turns.

Opposed to these considerations stands the fact already alluded to, that jurisdiction, in a proper context, may imply sovereignty. Enough has been said, I think, to indicate that that circumstance, as applied to the present juncture, is entirely insufficient to withstand the array of reasoning and authority to the contrary, and that the jurisdiction that was conceded to New York over the land and waters within the territorial limits of New Jersey was not governmental.

From these considerations, the conclusions reached are that the agreement of 1833 between the commissioners representing the States of New Jersey and New York, having been confirmed by their respective legislatures and approved by the congress of the United States, established the boundary line between this state and the State of New York in the middle of the Hudson river and of the bay of New York, and that the sovereignty of the State of New Jersey is coextensive with the territorial limits thus established, subject only to such extra-territorial jurisdiction of a juridical character as was by the said compact conceded to the State of New York, from which it results that the sovereign power of taxation over all the territory thus defined resides in the State of New Jersey.

These conclusions lead to the affirmance of the tax levied upon the lands of the prosecutor.

Central R. Co. of New Jersey vs. Mayor, etc., of Jersey City. (Court of Errors and Appeals of New Jersey. June 19, 1905.) (61 Atlantic Reporter, 1118.)

Error to the Supreme Court. Certiorari by the Central Railroad Company of New Jersey against the mayor and aldermen of Jersey City, to review a tax assessment. There was a judgment of the Su-

preme Court (56 Atl. 239) affirming the assessment, and plaintiff brings error. Affirmed. Frank Bergen, William D. Edwards and George Holmes, for plaintiff in error. George L. Record for defendants in error.

Per CURIAM:

The judgment of the Supreme Court, brought here by this writ of error, is affirmed for the reasons given by Mr. Justice Garrison in his opinion in that court, reported in 70 N. J. Law, 81 56 Atl. 239.

United States Circuit Court, District of New Jersey.

In Equity. Suit No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY et al., Defendants.

On Bill.

Replication.

(Filed January 17, 1907.)

The Complainant joins issue upon the answer of the defendant filed in the above entitled cause.

MERRITT LANE,
Sol'rs — Compl't.

51 United States Circuit Court, District of New Jersey.

Suit No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and Edward Fry, City Collector of the City of Jersey City, Defendants.

On Bill.

Stipulation.

(Filed September 9, 1907.)

It is stipulated and agreed that in the above entitled suit the following facts are admitted to be true and so far as material or relevant shall be considered in evidence.

1. The lands and premises known upon the official assessment map of Jersey City as lots 4B–7B, Block 1507, and shown upon

the map, Exhibit C. 1, made a part of this stipulation, are lands which were always, and are now wholly under the tide waters of the Bay of New York.

2. That before the lease of said lands as hereinafter mentioned they belonged absolutely to the State of New Jersey, and were and always had been a part of the public domain, subject to the right of riparian owners, if any they had.

3. That the State of New Jersey, through its riparian commissioners, made a lease of said lands under water to the Morris & Cumings Dredging Company, which lease was dated April 30th, 1881, and which said lease and the map thereto annexed shall be considered in evidence, Exhibit C. 2, and the contents of said lease shall be considered a part of this stipulation; that upon the 24th day of February, 1904, the Morris & Cumings Dredging Company made an assignment of the lease above mentioned to Daniel J. Leary; that the said assignment and the documents thereto annexed shall be considered in evidence, Exhibit C. 3. That all of said documents were recorded about the date of their dates. That the said lease above mentioned is and has been since the 24th day of February, 1904, owned by the said Daniel J. Leary. That until the assignment to him all the rentals to the State were
52 paid by the Morris & Cumings Dredging Company and since the assignment Daniel J. Leary has paid such rentals. That all rentals have been duly paid. The complainant purchased said lease at the time of such assignment for a valuable consideration and now owns said lease and no other person or corporation has any interest therein. That the complainant is in peaceful possession of the leasehold rights and privileges, claiming to own the same.

4. That the Morris & Cumings Dredging Company and Daniel J. Leary are and always have been residents, inhabitants and citizens of the State of New York, and The Mayor and Aldermen of Jersey City and Edward Fry, City Collector of Jersey City are and always have been residents and inhabitants and citizens of the State of New Jersey.

5. That the Mayor and Aldermen of Jersey City entered upon the tax books of the City of Jersey City as taxes against said lands hereinbefore mentioned, the following:

Year.	Valuation.	Tax.
1883	$43,000	$1,410.00
1884	43,000	1,281.40
1885	94,080	3,084.68
1886	94,000	2,763.60
1887	268,800	7,741.44
1888	201,600	6,007.68
1889	201,600	5,644.80
1890	201,600	5,322.24
1891	215,000	6,106.00
1892	215,000	6,106.00
1893	215,000	5,912.50

1894	215,000	5,912.50
1895	215,000	5,912.50
1896	215,000	5,891.00
1897	215,000	6,213.50
1898	215,000	6,149.00
1899	215,000	6,106.00
1900	402,000	11,336.40
1901	416,000	11,648.00
1902	416,000	11,564.80
1903	416,000	17,440.00
1904	456,000	11,389.40
1905	.....	12,448.80

That previous to 1883 no taxes were assessed against these lands.

53 That no appeal from the assessed valuation of the property was taken to the local board or to the state board of taxation. That tax bills were sent out in the regular course and received by the holders of the leases. That it is admitted that said taxes are apparent liens on the rights of the complainant and constitute a cloud upon his title.

That said taxes are upon said lands alone and no other lands are included in the respective assessments, said lands being assessed for taxation as one parcel and as lands under water. That the City assessment books up until nineteen hundred and five mention the Morris & Cumings Dredging Company, and thereafter Daniel J. Leary as the persons assessed, the description of the property assessed being lands under water, the form of assessment in each case being:

Owner's name.	Vacant lots.	Value of real estate.
Daniel J. Leary.	Lands under water.	

That the assessments are at the same rate and the valuation is fixed in the same way as the valuation and rates, on lands under water adjoining held by grant from the State of New Jersey, there being no distinction made in the assessments between a grant from the State and a lease from the State, a lease and grant being assessed for purpose of taxation at the same valuation. That the situation of said lands in reference to the upland and other property in the immediate neighborhood is shown by the map made a part of this stipulation and marked C. 4. That no structures have ever been built upon this property for any purpose whatever. That the water above them is navigable for small vessels and no effort has been made by lessees to prevent navigation.

That under an act entitled "An act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in cities of this state and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessment," approved March 30th, 1886, being Chapter 112 of the Laws of 1886, the Board of Alder-

men of the City of Jersey City with the concurrence of the board or body having control of the finances of the said city caused to be appointed a commission which said act provided for, known as the Commissioners of Adjustment, which said commissioners proceeded as directed under said act, to examine the arrearages of taxes and to report thereon. That after the filing of the Bill of Com-
54 plaint herein the complainant was notified that the said Commissioners of Adjustment would proceed to consider the arrearages of taxes mentioned in the Bill of Complaint, and the said complainant thereupon appeared before the said board, and objected to the jurisdiction of said board, and objected to the right of said board to consider said arrearages because of the illegality of the said taxes as set forth in the Bill of Complaint, but the said Commissioners proceeded to consider said arrearages and made a report to the judge of the Hudson County Circuit Court as provided for in said act, which said report, however, was not confirmed, but was referred back to the said commissioners of adjustment for further consideration. The said Commissioners of Adjustment have done nothing further in said matter, leaving said taxes as stated in the Bill of Complaint apparent liens upon the said lands and the City Collector of Jersey City and the Mayor and Aldermen of Jersey City threaten to sell said lands for the non-payment of said taxes as stated in the Bill of Complaint, notwithstanding the action of the Commissioners of Adjustment, the said City Collector and the Mayor and Aldermen insisting that the action of the Commissioners of Adjustment does not prevent them from proceeding to sell said lands as set forth in the Bill of Complaint.

7. That Edward Fry, City Collector of Jersey City, sent to Daniel J. Leary, the complainant, a notice dated April 19th, 1906, made a part of this stipulation and shall be considered in evidence, Exhibit C 5, by which notice he notified the said complainant that he would, on May 29th, 1906, advertise said lands for sale to pay the taxes assessed as aforesaid from 1883 to 1902, both inclusive, and that on or about the third day of July, 1906, the said City Collector did cause to be published in the Evening Journal, a public newspaper in Jersey City, an advertisement, made a part of this stipulation and shall be considered in evidence, Exhibit C 6, which said advertisement stated that the said City Collector would upon the 24th day of July, sell said lands for the payment of such taxes. That all the facts stated in the bill as to said notice are admitted to be true.

8. That there shall be considered in evidence the following acts and parts of acts and they are all made a part of this stipulation.

An act of the legislature of the State of New Jersey entitled "An act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in cities of this State and imposing and levying a tax, assessment and lien in lieu
55 and instead of such arrearages and to enforce the payment thereof and to provide for the sale of lands subjected to future taxation and assessment," such act being approved March 30th, 1886, and being Chapter 112, and particularly paragraphs 13, 17, 22, 55 and 63 thereof, Exhibit C 6*a;* Section 49 of an act entitled

"An act for the assessment and collection of taxes" approved April 8th, 1903, Exhibit C 7; Section- 151 and 152 of an act entitled "An act to reorganize the local government of Jersey City," approved March 31st, 1871, made a part of this stipulation, Exhibit C 8; Section 1 of an act entitled "A further act concerning taxes, etc.," approved March 14, 1879, General Statutes, 3353 P. L. 1879, p. 340, Exhibit C 9; also a supplement to such act, approved April 2, 1888, P. L. 1888, p. 372, General Statutes, 3359, Sec. 102, Exhibit C 10. Section 1, P. L. 1882, p. 130, approved March 17th, 1882, General Statutes 3360, Exhibit C 11. Section 2, a supplement to an amended act of 1888, p. 372, 1898, approved May 17, 1898, P. L. 455, Exhibit C 12. Paragraph 3 and paragraph 5 of an act entitled "An act for the assessment and collection of taxes" approved April 8th, 1903, Exhibit C 13. Section 5 of an act approved March 19th, 1891, General Statutes of New Jersey, 3345, Exhibit C 14. Section 1 of an act approved March 17th, 1854, General Statutes of New Jersey, 3350, Exhibit C 15. Section 33, Tax Act of 1846, approved April 14th, 1846, General Statutes, p. 3287, Exhibit C 16. Section 46 Tax Act of 1903, approved April 8th, 1903, Exhibit C 17. That the acts hereinbefore referred to became in force at the time of their passage and if valid remained in force until the present time unless altered by some other act above referred to.

That the reference to the above acts shall not deprive either party from referring to any other act of the legislature of the State of New Jersey, if material or relevant.

9. That the lands or interests belonging to the State of New Jersey are not and never have been under the laws of the State of New Jersey taxable; that any authority to tax the lands under tide water, the lease of which is now held by the complainant must be found in the acts hereinbefore referred to, there being no legislation subjecting such lands to taxation unless authority so to do is found in such acts. That there is no legislation permitting a suit against the State of New Jersey.

10. That there shall be considered in evidence Section 1 of an act to reorganize the local government of Jersey City, approved March 31, 1871, Exhibit C. 18; that the City of Jersey City was consolidated with the township of Greenville by an act of the legis-
56 lature approved February 4th, 1873, P. L. 203, sections 1 and 4, of which said act the only sections dealing with boundaries shall be considered in evidence, Exhibit C. 19, and section 1 an act incorporating the township of Greenville, approved on the 18th of March, 1863, being that portion of said act laying out the boundaries of said township shall be considered in evidence and made a part of this stipulation, Exhibit C. 20; that if the lands under water leased to complainant became a part of Jersey City they became so under the provisions of the foregoing acts as no lands under water are mentioned in any subsequent legislation nor were any lands under water ever included in any of the charters granted to the township of Bergen unless it be some act herein referred to.

10*a*. That the income from leases of riparian lands including that herein referred to, constitute a part of the school fund and have con-

stituted a part of the school fund to meet "the fund for the support of free schools since 1869. Paragraph 6, section 7 of article 4 Constitution of New Jersey is made a part hereof, Exhibit C. 21.

11. That there shall be considered in evidence the following books, papers and documents, acts and parts of acts, and each of them is made a part of this stipulation.

Grant from Charles II., King of England, to Duke of York, dated March 12, 1663-4, Leam. & S., p. 3. Exhibit C. 30.

Grant from Duke of York to Berkeley & Carteret, June 24, 1664, Leam. & S., p. 9. Exhibit C. 31.

Letter from Colonel Nicholls to Duke of York, 1665, N. J. Arch., vol. 1, p. 46. Exhibit C. 32.

Commission to Governor Carteret, February 10, 1664-5, Leam. & S., p. 26. Exhibit C. 33.

Instructions to Governor Carteret, February 10, 1664-5, Leam. & S., p. 28. Exhibit C. 34.

Grant by Governor Nicholls to Robert Needham, of Bedlow's Island, December 23, 1667, Book of Patents in office of N. Y. Secretary of State, vol. 2, p. 146. Exhibit C. 35.

Grant by Needham to Isaeck Bedlow, of said island, December 24, 1667, annexed to former grant. Exhibit C. 36.

Grant by Governor Andros to Captain William Dyre, of Ellis Island, 1676, Book of Patents, in office of N. Y. Secretary of State, vol. 4, p. 115. Exhibit C. 37.

Patent creating the town of Bergen, 1668, Winfield's History of Hudson County, p. 105, Lib. 1, of Deeds, Patents, &c., p. 31, in office of Secretary of State. Exhibit C. 38.

57 Letter from Samuel Mavericks to Lord Arlington, August 25, 1668, N. J. Arch., vol. 1, p. 57. Exhibit C. 39.

Confirmatory grant from Charles II. to Duke of York, June 29, 1674, Leam. & S., p. 41. Exhibit C. 40.

Grant from Duke of York to Carteret, July 29, 1674, Leam. & S., p. 46. Exhibit C. 41.

Quintipartite deed, July 1, 1676, Leam. & S., p. 61. Exhibit C. 42.

Lease from Elizabeth Carteret et al., to first twelve proprietors, February 1, 1681–2, N. J. Arch., vol. 1, p. 366. Exhibit C. 43.

Release from Duke of York to twenty-four proprietors, March 14, 1682–3, Leam. & S., p. 141. Exhibit C. 44.

Commission of Duke of York to Governor Dongan, September 30, 1682, N. Y. Col. Decs., vol. 3, p. 328. Exhibit C. 45.

"An act to divide the province into four counties, passed in 1682, Leam. & S., p. 229. Exhibit C. 46.

Letter from Duke of York to Governor Dongan, August 26, 1684, N. J. Arch., vol. 1, p. 474. Exhibit C. 47.

"An act to divide the province and dependencies into shires and counties," passed the 1st of October, 1691, Bradford's Laws of N. Y., p. 39. Exhibit C. 48.

"An act for dividing each county into townships," passed in 1693, Leam. & S., p. 329. Exhibit C. 49.

Surrender by the Proprietors of the Government of East and West

New Jersey and acceptance of the same, Leam. & S., pp. 609 and 617. Exhibit C. 50.

"An act for dividing and ascertaining the boundaries of all the counties in this province," passed January 21, 1709–10, Rev. of N. J. 1877, p. 198. Exhibit C. 51.

Charter granted by Governor Hunter to the town or townships of Bergen, January 14, 1713–14. Recorded in Liber AAA of Commissions, pp. 154–155, in office of N. J. Secretary of State. Exhibit C. 52.

Charter granted by Governor Hunter to the City of Perth Amboy, May 22, 1718, recorded in Surveyor General's office, Eastern Division of N. J., Book C, 2., p. 1. Exhibit C. 53.

Letter from Lewis Morris, President of the Council of New Jersey, to the Lords of Trade, giving the boundaries of New Jersey, November 21, 1719, N. J. Arch., vol. 4, p. 439. Exhibit C. 54.

The Montgomeric charter of the City of New York, granted in 1730, found in New York City Consolidation Act, annotated 1891, by Mark. Ash., pp. 892–etc. Exhibit C. 55.

58 "An act for confirming unto the City of New York its rights and privileges," passed October 14, 1732, Laws of New York from 1691 to 1751, inclusive, p. 207. Exhibit C. 56.

Letter from Governor Crosby to the Lords of Trade, dated August 29, 1733, Documents relating to the Colonial History of New York, vol. 5, p. 936. Exhibit C. 57.

Letters from Lords of Trade to Governor Crosby August 22, 1734, Lib. vol. 6, p. 16. Exhibit C. 58.

Letter from Governor Crosby to Lords of Trade December 7, 1734, Lib. vol. 6, p. 24. Exhibit C. 59.

"An act appointing commissioners for finally settling and determining the several rights, titles, and claims to the common lands of the township of Bergen, and for making a partition thereof in just and equitable proportions among those who shall be adjudged by the said commissioners to be entitled to the same," passed 1763. Laws of 1763, p. 66. Exhibit C. 60.

Proceedings of said commissioners in pursuance of said act and supplements, on file in the offices of the Clerks of Bergen and Hudson Counties, and in the office of the clerk of the Township of Bergen, and published in Winfield's Land Titles. Exhibit C. 61.

"An act for establishing the boundary or partition line between the colonies of New York and Nova Cæsarea or New Jersey and for confirming the titles and possessions," passed September 26, 1772, Paterson's Laws, p. 22. Exhibit *2*, 62.

The constitution of the state of New York adopted in 1777, revised Stats. of N. Y. 1829, vol. 1, p. 37. Exhibit C. 63.

"An act erecting the northward of Perth Amboy and a part of the township of Woodbridge, in the County of Middlesex, into a city, and for incorporating the same by the name and title of "the City of Perth Amboy," passed December 21, 1784, Paterson's Laws, p. 64. Exhibit C. 64.

"An act for dividing the State into counties," passed March 7, 1788, 2nd Greenleaf's N. Y. Laws, p. 148. Exhibit C. 65.

"An act to establish and confirm the charter rights and privileges of the Borough of Elizabeth," passed November 28, 1789. Paterson's Laws, p. 84. Exhibit *6*. 66.

"An act for altering the wards in the City of York," passed February 28, 1791, Laws of N. Y. 1789–1796, inc., vol. 3, p. 217. Exhibit C. 67.

An ordinance passed by the Common Council of the City of New York, April 20, 1795, Minutes of Common Council of N. Y. for 1795, vol. 11, p. 222. Exhibit C. 68.

59 "An act to cede to the United States the jurisdiction of certain islands, situate in and about the harbor of New York," passed February 15, 1890, P. L. of N. Y. 1800, p. 7. Exhibit C. 69.

"An act to increase the number of wards in the City of New York, and to equalize the same," passed March 18, 1803, Webster's Laws of N. Y., vol. 3, p. 225. Exhibit C. 70.

"An act to amend the charter granted for the incorporation of the freeholders, inhabitants of the township of Bergen," passed March 12, 1806, Laws of 1800 to 1806, p. 679. Exhibit C. 71.

"An act to divide the seventh ward into two wards," passed March 18, 1808, P. L. of N. Y. 1808, p. 58. Exhibit C. 72.

"An act relative to the jurisdiction of this State over the territory therein mentioned, passed April 6, 1808, P. L. of N. Y. 1808, p. 136. Exhibit C. 73.

"An act to reduce certain laws relating particularly to the City of New York into one act," passed April 9, 1813, Rev. Stats. of N. Y. 1813, vol. 2, p. 342. Exhibit C. 74.

The constitution of the State of New York adopted in the year 1821, Revised Stats. of N. Y. 1829, vol. 1, p. 54. Exhibit C. 75.

"An act to equalize and increase the number of wards in the City of New York," passed April 16, 1825, P. L. of N. Y. 1825, p. 286. Exhibit C. 76.

"An act concerning the territorial limits and divisions of the civil polity and the internal administration of this State," Revised Stats. of N. Y. 1829, vol. 1, p. 61. Exhibit C. 77.

"An act concerning the sovereignty and jurisdiction of the State," Revised Stats. of N. Y. 1829, vol. 1, p. 65. Exhibit C. 78.

Section 1, consisting of 14 paragraphs of Title, Chapter 2, part 1, of the revised stats. of New York, 1829, vol. 3, p. 121. Exhibit C. 79.

"An act concerning the territorial limits and jurisdiction of the State of New York and the State of New Jersey," passed Jan. 18, 1833, P. L. of N. Y. 1833, p. 6. Exhibit C. 80.

"An act for the settlement of the territorial limits and jurisdiction between the State of New Jersey and New York," passed February 6, 1833, P. L. of N. J. 1833, p. 54. Exhibit C. 81.

"An act concerning the agreement entered into by the commissioners appointed by this State and commissioners appointed by the State of New Jersey to settle the boundary line between New York and New Jersey," passed February 5, 1834, P. L. of N. Y. 1834, p. 8, Exhibit C. 82.

"An act to ratify and confirm an agreement made between
60 the commissioners appointed by the Governor of the State of New York and the commissioners appointed by the Governor of the State of New Jersey, respecting the territorial limits and jurisdiction between said States," passed February 26, 1834, and the agreement therein recited, Rev. of N. J. 1877, p. 1176. Exhibit C. 83.

"An act giving the consent of Congress to an agreement or compact entered into between the State of New York and the State of New Jersey, respecting the territorial limits and jurisdiction of said States, passed June 28, 1834, U. S. Stats. at Large, vol. 4, p. 808. Exhibit C. 84.

"An act to create the County of Hudson," passed February 22, 1840, Rev. of N. J. 1877, p. 205. Exhibit C. 85.

"An act to incorporate the City of Perth Amboy, passed February 27, 1844, P. L. 1844, p. 122. Exhibit C. 86.

"An act to incorporate the town of Bergen," passed March 11, 1862, P. L. of N. J. 1862, p. 162. Exhibit C. 87.

"An act to create from the town of Bergen in the county of Hudson a new township to be called the township of Greenville," approved March 18, 1863, Laws of N. J. 1863, p. 306. Exhibit C. 88.

"An act to incorporate the City of Bergen," approved March 11, 1868, Laws of N. J. 1868, p. 314. Exhibit C. 89.

"An act to reorganize the local government of Jersey City," passed March 31, 1871, Laws of N. J. 1871, p. 1094. Exhibit C. 90.

"A supplement to an act entitled 'An act to reorganize the local government of Jersey City, passed March 31, 1871," approved February 4, 1873, Laws of N. J. 1873, p. 203. Exhibit C. 91.

"An act to consolidate into one act and to declare the special and local laws affecting public interests in the City of New York," passed July 1, 1882, Chap. 410, of the Laws of N. Y. 1882. Exhibit C. 92.

"An act making appropriations for the construction, repair and preservation of certain public works on rivers and harbors, and for other purposes," passed August 11, 1888, U. S. Stats. at Large, vol. 25, pp. 400, 425. Exhibit C. 93.

The compact between the States of New York and New Jersey in 1833. Exhibit C. 94. See Exhibit C. 83.

An act of Congress of the United States approving said compact, U. S. Statutes at Large, Vol. 4, p. 808. Exhibit C. 95. Same as Exhibit C. 84.

An act of the Legislature of the State of New Jersey, 1834, Laws of 1834, p. 118. Exhibit C. 96. Exhibit C. 83.

61 & 62 An act of the Legislature of the State of New York, Laws of N. Y. 1834. Exhibit C. 97. Same as Exhibit C. 82.

12. That there shall be considered in evidence so far as relevant or material, the following acts, parts of acts and documents, made part of his stipulation offered on behalf of the defendant.

Chapter 69 of the Laws of 1887 of New York, Exhibit D. 1; Chapter 159 of the Laws of 1887 of New Jersey Exhibit D. 2. Chapter 212 of the Laws of the State of New York, Exhibit D. 3; the

opinion of the Court of Appeals in the case of New York vs. Central R. R. of N. J. 42 N. Y. Ct. of Appeals reports, 283 Exhibit D. 4.

13. That the reference to the various acts and parts of acts herein shall not deprive either party from referring to any other acts or parts of acts or opinions or the right to refer to the common law and the proper method of determining such common law.

14. That there shall be considered in evidence a map entitled "New York Bay Harbor," showing the lands in question and the harbor depth, published under the authority of the United States Government, Exhibit C. 98.

15. That there shall also be considered in evidence a map entitled "Tax Map of 1904" upon which the lands and premises assessed are designated A, Exhibit C. 99.

16. That there shall be considered in evidence section 151 Charter of Jersey City, above referred to, a copy of which is hereto annexed and made a part of this stipulation. Exhibit C. 100, same as Exhibit C. 8.

17. That there shall be considered in evidence so much and such parts of an act entitled "An act for the limitation of suits respecting title to lands," approved June 5th, 1787, and an act for the limitation of actions, revision, March 27th, 1874, as shall be material or relevant.

18. That all there is due to the State of New Jersey has been paid and that the complainant, Daniel J. Leary, is holding under the lease hereinbefore mentioned and no other grant or conveyance has been made by the State of New Jersey of said lands other than herein stated.

19. That all the facts mentioned and set forth in the Bill of Complaint admitted or not denied by the answer shall be considered in evidence, besides those facts hereinbefore set forth.

MERRITT LANE,
Solicitor for Complainant.
ROBERT CAREY,
Solicitor for Defendant.

63 United States Circuit Court, District of New Jersey.

Suit No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY and EDWARD FRY, City Collector of Jersey City, Defendants.

On Bill, etc.

Amendment to Bill of Complaint.

(Filed February 4, 1908.)

Amend the Bill of Complaint by inserting the following provision:

And your orator further shows that the lands and premises mentioned and set forth in the Bill of Complaint constitute a part of the fund for the support of free schools and the rentals from such lands constitute a portion of the fund for the support of free schools. That the legislature of the state of New Jersey appropriated such lands and rentals to such purpose by the act entitled "An act to ascertain the rights of the State and riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this state"; that the fund for the support of free schools is protected by paragraph 6, section 7, article 4 of the constitution of New Jersey and the legislature is prohibited from depleting or defrauding such property or funds; that before the leases of such lands were made they were not taxable. That the legislature of the State of New Jersey is prohibited by the constitution from authorizing or permitting the taxation of such lands or the taxation of the rentals from such lands and is prohibited from granting or leasing such lands subject to taxation because if said lands are so granted or leased subject to taxation, then the fund for the support of the public schools will be depleted contrary to the inhibition of the constitution as hereinbefore mentioned and set forth; that taxation of said lands or rents or leases is therefore unconstitutional and null and void.

That the legislature has no right or power to permit the taxation of the owner of the lands after said lands have been leased without permitting a recovery against the owner of the fee in accordance with the tax laws of the State because such action would be
64 in violation of the constitution of the United States as set forth in the Bill of Complaint and it has no right to permit a recovery against the state because such act would result in a depletion of the school fund contrary to the constitution of the State of New Jersey.

And your orator charges and insists that there never was any intention on the part of the legislature to permit the taxation of these lands or of the owners of the leases and that it is apparent that at

the time the rents were fixed they were fixed upon the understanding and belief that the owners of the leases would not have to pay taxes.

ZIEGENER & LANE,
Sol'rs for Complainant.

MERRITT LANE,
Of Counsel with Complainant.

United States Circuit Court, Third Circuit, District of New Jersey.

Suit No. 1.

DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY et als., Defendants.

On Bill for Relief.

Supplemental Bill.

(Filed November 16, 1908.)

To the Judges of the Circuit Court of the United States, Third Circuit, District of Jersey:

Daniel J. Leary, of New York City, in the State of New York, and a citizen of the State of New York, presents this, his supplemental Bill of Complaint, against the Mayor and Aldermen of the City of Jersey City and Robert Davis, City Collector of the City of Jersey City, and all citizens of the City of Jersey City, County of Hudson and State of New Jersey, and thereupon your Orator complains and says that he filed his original Bill against the Mayor and Aldermen of the City of Jersey City, and the City Collector of the City of Jersey City Robert Davis, afterwards substituted in his place and stead, in this Court upon the ninth day of July, Nine-
65 teen hundred and six, for an injunction restraining the said defendants from proceeding to sell lands and premises, held by your orator under lease from the State of New Jersey, and the interest of your Orator in said lands and premises, for non-payment of alleged taxes mentioned and set forth in the Bill of Complaint, and enjoining further proceedings to levy taxes and assessments upon the said lands and premises, mentioned in the Bill of Complaint, and the right and interest of your orator therein and for a decree cancelling the said alleged taxes levied or attempted to be levied as aforesaid, and which alleged taxes were particularly mentioned and set forth in the Bill of Complaint, and for other relief as stated in his original Bill.

2. Your Orator further shows that since the filing of his original Bill of Complaint, certain persons assuming to act as Commissioners of Adjustment, in and for the City of Jersey City, under and in pursuance of a certain act of the Legislature of the State of New

Jersey entitled "An act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in cities of this State, and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages, and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessment," approved March 30th, 1886, and commonly known as the Martin Act, proceeded to consider the taxes claimed to have been assessed, levied and apportioned against the lands and premises mentioned and set forth in your Orator's original Bill of Complaint from the year eighteen hundred and eighty-three up to and including the year Nineteen hundred and seven, which said taxes are particularly mentioned and described in the original Bill of Complaint, and further assuming to act in pursuance of the provisions of said act aforesaid, the said persons aforesaid did upon the sixteenth day of April, Nineteen hundred and eight, file in the Clerk's Office of the County of Hudson, a certain report addressed to the Honorable the Circuit Court of the County of Hudson, and which said report is known as report No. 113. In and by said report the said persons, assuming to act as Commissioners of Adjustment in and for the City of Jersey City, did report that they had adjusted the alleged taxes against the lands and premises mentioned in your Orator's Bill of Complaint as follows:

66	1507. 4B & 7-B, Daniel J. Leary..	1883	$3,131.27
		1884	2,780.80
		1885	6,539.94
		1886	5,721.13
		1887	4,204.80
		1888	4,350.80
		1889	4,088.
		1890	3,854.40
		1891	4,146.40
		1892	4,146.40
		1893	4,015.
		1894	4,015.
		1895	4,015.
		1896	4,400.40
		1897	4,219.40
		1898	4,175.60
		1899	4,146.40
		1900	4,991.40
		1901	4,956.
		1902	4,920.60
		1903	4,867.50
		1904	4,849.70
		1905	4,832.10
		1906	4,407.30
		1907	2,863.86

Thereafter and upon the 30th day of June, nineteen hundred and eight, his Honor, William H. Speer, as Hudson County Circuit Judge, duly confirmed said report, and said report is about

to be or has been filed with the Comptroller and City Collector of Jersey City.

3. Your Orator further shows that the taxes above mentioned, and which were reported as adjusted by the said Commissioners of Adjustment aforesaid are the same alleged taxes mentioned and set forth in your Orator's original Bill of Complaint, and which said alleged taxes are claimed by your Orator, to be invalid and illegal, and improperly attempted to be levied and assessed, and upon lands and interests, which, as your Orator has claimed and insisted in his original Bill of Complaint and still claims and insists are not subject to taxation.

4. Your Orator shows that under and in pursuance of Section three of the act aforesaid, it is provided,

67 "That the said Commissioners of Adjustment shall make reports from time to time, as they proceed with the discharge of their duties, of the amounts so charged and assessed, and shall file the same, with the said map, in the office of the Clerk of the Court by which they were appointed; said reports shall be certified by the signatures of at least two of the said Commissioners, and upon the coming in and filing of any such report signed by the said Commissioners, or any two of them, such notice shall be given as the said Court shall direct of the time and place of hearing any objection that may be made to the assessments, charges and liens so fixed and certified by the Commissioners, and, after hearing any matter that may be alleged against the same, the said Court shall, by rule or order, either confirm the said report or refer it to the same commissioners, or to other commissioners to be appointed by the said Court, to reconsider the subject matter thereof, and the said commissioners to whom the said report may be so referred, shall return the same corrected and revised, or a new report to be made by them in the premises, to the said Court, without unnecessary delay, and the same, on being so returned, shall be confirmed, or again referred by the said Court in the manner aforesaid, as right and justice may require, and so from time to time, until a report shall be made or returned in the premises which the said Court shall confirm; said report, upon being so confirmed, shall be final and conclusive upon the said City, and upon all persons owning or having any interest in or lien upon said lands, and against all persons whomsoever, and the amount so fixed, determined, certified and confirmed in each case, shall thereupon become and be a valid and binding tax, assessment and lien on the lands so designated, in lieu and instead of all outstanding claims of the City for arrearages of taxes, assessments or water rates levied or confirmed, or attempted to be levied or confirmed, prior to the making of the said report, and shall be a valid lien on said lands, having priority over all other liens, claims or demands whatsoever, except taxes, assessments or water rates levied after the making of the said report."

68 That by Section four of the said act, it is provided:

"That upon the confirmation of the said report a certified copy of the same, with the assessment map filed therewith, shall be

transmitted to the Comptroller of the City, or other officer for collecting assessments, to be filed by him in his office, and thereupon the amount of said tax, assessment and lien so fixed and certified in respect of each and every lot or parcel of land included therein shall immediately become due and payable, and shall be collected by the said Comptroller or said other officer without interest, if the same be paid within sixty days after the filing of such certified report with him, and if not so paid, then with interest from the date of such filing at the rate of six per centum per annum, and if not paid within six months from such filing, with interest at the rate of seven per centum per annum, from the date of such filing; the Comptroller or said other officer shall not be required to make any demand for the payment of said tax, assessment and lien, and if, after the expiration of six months from the filing of the said certified copy of any report and assessment map, the amount therein certified in respect of any lot or parcel of land shall not have been collected or paid, the said Comptroller or said other officer after giving notice by advertisement as hereinafter required, shall sell the said lot or parcel of land at public auction to the highest bidder, but not for less than the amount due from the same, as appears by the said report, with interest and costs."

That by section four of a supplement to said act, Laws 1888, Chapter 330, it is provided,

"When the said report, or a certified copy thereof, shall have been filed with the Comptroller of the City or other officer for collecting assessments, it shall be the duty of said Comptroller or other officer forthwith to certify to all officers of the City having custody of records showing liens for taxes, assessments and water rates or water rents, a particular designation of the land and premises affected thereby, whereupon the said Comptroller, City Collector, City Clerk or other officer in whose office any record of taxes, assessments, water rates or water rents, or sales therefor shall remain, shall forthwith cancel upon the records in their respective
69 offices all prior liens for taxes, assessments and water rents or water rates, held by or for the use of said City upon the land and premises included in said report."

And by section five of said act, as amended, it is provided,

"The Comptroller or other collecting officer shall on the receipt of the purchase money on any sale (that is a sale as provided for in section four aforesaid) or of bonds in lieu thereof, as provided by this act, execute and deliver to the purchaser a certificate of such sale, which shall contain a covenant on the part of the City to refund the amount paid for said lands in cash, where cash was received, and to return the bonds or obligations, where bonds or obligations were received, without interest, in case the title conveyed by said sale shall prove invalid; upon surrender of the said certificate of sale and proof of service of the notice thereof as hereinafter provided, upon the owners and mortgagees of the said lands and premises, the comptroller or other collecting officer shall, after the expiration of six months from the date of such service, execute and deliver to the purchaser at such sale, his heirs, devisees and assigns, a deed

for said lands and premises, which shall be sealed and attested by the clerk of the City and proved in the usual manner; and such purchaser, his heirs, legal representatives or assigns shall take a good and sufficient title to the property sold in fee simple absolute, free of all incumbrances (except taxes, assessments, water rates levied after the confirmation of said report, and except sewer assessments made and levied under the provisions of an act entitled "An act to authorize cities to construct sewers and drains and to provide for the payment of the cost thereof," approved March eighth, one thousand eight hundred and eighty-two, when the sewer assessment on the land sold was not included in the report of the Commissioners, of which the said deed shall be presumptive evidence in all courts and places, and in any proceedings or actions to be by such purchasers, his heirs, legal representatives or assigns, taken, prosecuted or defended for the recovery of the possession of the property so sold as aforesaid or in the establishment or defense of his or their title, shown as aforesaid by such deed, the title shall not fail or be
70 defeated by reason of any irregularity or formal defect in the procedure taken under this act, upon which the sale shall have been made or the title conveyed as aforesaid, or by reason of any illegality in fixing and adjusting the tax, assessment and lien, to enforce which said sale was made or in the proceeding for collecting the same: provided, the property sold was liable, at times such tax, assessment and lien was fixed and adjusted, to the imposition of a tax, assessment or lien in respect of the purposes for which such tax, assessment and lien was fixed and imposed, and it does not appear that any substantial injury was done to the owner of the property by reason of the irregular or illegal manner or method of fixing, imposing or collecting said tax, assessment and lien.

And your Orator shows that the apparent effect of the provisions of said act aforesaid is to make the amount fixed and determined by the said report of the Adjustment Commissioners for Jersey City as above set forth after having been confirmed by the Circuit Court of the County of Hudson, apparently, a valid and binding tax, assessment and lien on the lands and premises mentioned and set forth in your Orator's Bill of Complaint, and upon such report being confirmed as aforesaid, and a certified copy transmitted to the Comptroller or other officer for collecting assessments in Jersey City, and upon being filed with him as aforesaid, the amounts so fixed and determined by said report, become apparent liens and charges upon the land and premises mentioned and described in your Orator's original Bill of Complaint, and upon such report being certified by said Comptroller or other officer to all officers of the City, having custody of records showing liens for taxes, assessments and water rents, the amounts so fixed and determined by said report become apparent liens or charges of record upon said lands and premises mentioned and described in your Orator's bill of Complaint. Upon such report being confirmed as aforesaid, the Comptroller or other collecting officer must under the provisions of the said act sell the said lands and premises mentioned and described in your Orator's

Bill of Complaint, for the payment of the amount of such apparent lien or charge, and the deed which the City Comptroller or collecting officer delivers therefor will be presumptive evidence in all courts and places of the title of the purchaser of such lands and premises.

5. That Robert Davis, City Collector of Jersey City, has threatened that he will receive said report and file it in his office,
71 and will transmit it to the officers having charge of the records of tax liens in said City and the said Robert Davis, City Collector of Jersey City, has threatened that he will sell or attempt to sell, the lands and premises mentioned and described in your orator's Bill of Complaint, and the interest of your orator therein, under and in pursuance with the said act aforesaid.

6. And your orator further shows that said report confirmed as aforesaid constitutes a cloud upon the title of said lands and premises mentioned and described in your orator's Bill of Complaint and upon the interest of your orator therein, and your orator is greatly harassed and injured, and his possession of said lands is disturbed; that the provision of said act giving the purchaser at the sale of said lands, a title in fee simple free and clear of encumbrance, will operate to divest the leasehold estate and privilege to purchase of your orator in said lands and premises, particularly mentioned and set forth in the original Bill of Complaint, that the possession of your orator of his leasehold rights and privileges will be disturbed, that the marketability of the leasehold estate of your orator depends upon the record title, and it is necessary that such title be clear of record, or your orator cannot dispose of such leasehold rights, said report so confirmed as above set forth casts a cloud upon the title of your orator, to said leasehold rights and renders the title of your orator imperfect and unmarketable and thereby greatly harasses and injures your orator in the premises. That the effect of the confirmation, filing and proceedings under said report has the same effect upon the rights of your Orator, as a sale to enforce payment of the original taxes mentioned and set forth in your Orator's Original Bill of Complaint would have. That the actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your Orator in the premises.

7. And your Orator charges and insists that the said alleged taxes purported to be adjusted and certified by the said Adjustment Commissioners in and for the City of Jersey City are illegal and invalid; that they were never properly levied or assessed upon the lands and premises mentioned and set forth in your Orator's Bill of Complaint, for the reasons more fully and particularly set forth in your Orator's original Bill of Complaint and your Orator claims and insists that the Commissioners of Adjustment, in and for the City of Jersey City, have no right or power to adjust taxes, never in fact legally levied or assessed, or taxes attempted to be levied or
72 assessed upon lands not properly taxable, and that such Commissioners of Adjustment, in and for the City of Jersey City, had no right or power to consider, adjust or certify taxes upon the

lands and premises mentioned and set forth in your Orator's Bill of Complaint, and that the Circuit Court of the County of Hudson had no right or power to consider or confirm or otherwise act upon said report.

8. And your Orator further charges and insists that the lands and premises mentioned and set forth in your Orator's Bill of Complaint are not liable to taxation for the reasons more fully and particularly set forth in your Orator's original Bill of Complaint, and that they are not subject to the imposition of any lien for taxes through or by means of the operation of the act herein particularly referred to, for the reasons set forth in your Orator's original Bill of Complaint, and the Commissioners of Adjustment in and for the City of Jersey City, had no right or power to adjust or attempt to adjust taxes upon the lands and premises mentioned and set forth in your Orator's Bill of Complaint and had no right or power to certify the said taxes and the Circuit Court of the County of Hudson had no right or power to consider, confirm or otherwise deal with said amounts so certified.

9. And your orator further shows that the amounts certified by the Adjustment Commissioners as adjusted taxes upon said lands and premises were fixed and adjusted upon the fee of said lands, which is in the State of New Jersey, and for the reasons set forth in your Orator's original Bill of Complaint not subject to taxation.

10. And your Orator further shows that the said amounts certified by the Adjustment Commissioners as adjusted taxes upon said lands and premises are grossly excessive, and based upon grossly excessive valuations; that said amounts are not the amounts which in equity and justice said lands should bear, and said Commissioners of Adjustment did not as required by section four of the act aforesaid, adjust and determine, how much of the arrearages and unpaid tax, etc., ought in fairness, equity and justice to be laid, etc., upon said lands; that said lands were not treated in the same manner as other lands within the taxing district of Jersey City, and the valuation of the same were not fixed and determined by said Adjustment Commissioners in the same manner that valuations of other lands were fixed and determined; that the said adjustment violates the provision of the constitution of the State of New Jersey, paragraph 12 of Section VII of Article IV, providing that property shall be assessed for taxes under general laws and by uniform rules according to its true value.

73 11. And your Orator further shows that the moneys derived by the State of New Jersey as rental from the leases of your Orator and the moneys which your Orator must pay under the option to purchase to get title to said lands and premises become and are under the Constitution and laws of the State of New Jersey, a part of the fund for the support of free schools, within the meaning of paragraph six of section VII and article IV of the Constitution of the State of New Jersey. That taxation of said lands and premises, and taxation of the rights of your Orator therein will result in diminishing such fund and is within the prohibition of

paragraph six of section VII of article IV of the Constitution aforesaid.

12. And your Orator further shows and insists that in and by said report there are alleged taxes reported as liens upon the lands and premises mentioned in your Orator's original Bill of Complaint, which said taxes were attempted to be levied and imposed more than twenty years last past, before the making of said reports, and your Orator shows and insists that the collection of all taxes are barred after the expiration of twenty years, after they are attempted to be levied, and that the said alleged taxes are also barred by the statute of limitations.

13. Your Orator further shows and charges that the said Adjustment Commissioners, in and for the City of Jersey City, have reported as tax liens upon said lands and premises alleged taxes, the lien of which had expired at the time of the said report.

14. That under section 2 of the act commonly known as the Martin Act above mentioned, the said Commissioners of Adjustment are expressly forbidden to take into consideration in making up their report any supposed want of jurisdiction, invalidity, irregularity or defect in any of the proceedings had for the levying, imposing or confirming of any of said taxes, assessments or water rates, in arrears, and by section 3 of said act as above set forth, the report of said Commissioners has the effect of creating "a new lien of outstanding claims" and such new lien has priority over all other liens or claims or demands whatsoever, and it is claimed that said lien is paramount to the interest of your Orator in said lands and premises.

Your Orator shows that at the time he obtained the assignments of lease aforesaid there were no liens for taxes upon said land and premises and at the time of the making of said report, there was no lien for taxes upon said lands. That the act of the legislature of the State of New Jersey aforesaid and the proceedings of the Adjustment Commissioners aforesaid, are contrary to Section one
74 of the fourteenth amendment to the Constitution of the United States that no person should be deprived of property without due process of law, and is contrary to paragraph one of Section ten of Article one of said Constitution which provides that no State should pass any law impairing the obligation of contracts.

That your Orator's contract of assignment is impaired and the original contract of lease from the State of New Jersey is impaired. That the lease from the State of New Jersey now held by your Orator provides for no taxation and no taxation was contemplated, and your Orator's contract of lease is impaired if alleged taxes are created liens upon said lands and premises prior and paramount to the interest of your Orator therein.

15. And your Orator further shows that said amounts so certified by the said Commissioners of Adjustment in and for the County of Hudson, are not proper liens or charges against the lands and premises mentioned and set forth in your Orator's Bill of Complaint for

the reasons more particularly mentioned and set forth in your Orator's original Bill of Complaint and herein, and that the confirmation of the said report, so far as it affects the lands and premises mentioned and described in your Orator's Bill of Complaint, and the filing of said report in the office of the Comptroller or other collecting officer of Jersey City and the sale of the said lands and premises to collect the amounts of said adjusted taxes is contrary to the constitutional rights of your Orator more fully set forth in your Orator's original Bill of Complaint and herein.

16. And your Orator shows that the confirmation of the said report and the filing thereof and the sale of the lands and premises, as above mentioned and set forth, violates your Orator's constitutional rights, that it is a denial to your Orator of the equal protection of the law, that it is a deprival of your Orator's property without due process of law, within the meaning of Section one of the fourteenth amendment of the Constitution of the United States; that it is a taking of your Orator's property for public use without just compensation within the meaning of the fifth amendment to the Constitution of the United States and of the Sixteenth section of Article one of the Constitution of the State of New Jersey.

17. And your Orator further shows that the said alleged taxes above mentioned so certified by the said Commissioners of Adjustment in and for the City of Jersey City, were assessed, levied and apportioned upon the fee of the lands and premises men-
75 tioned and described in your Orator's Bill of Complaint, and said adjusted taxes and assessments were attempted to be levied and imposed under the same conditions as the original taxes were levied and imposed, and more particularly set forth in your Orator's Bill of Complaint, and that they and each of them are subject to all the objections raised in your Orator's original Bill of Complaint as to the legality and validity of the alleged taxes mentioned and set forth in your Orator's original Bill of Complaint, and the additional objections mentioned and set forth in this Supplemental Bill of Complaint, and your Orator begs leave to raise against the legality and validity of said adjusted taxes all the objections raised by him in his original Bill of Complaint against the original taxes mentioned and set forth therein and your Orator begs leave to raise against the legality and validity of the taxes mentioned and set forth in your Orator's original Bill and the sale therein mentioned, all the additional objections raised in his supplemental bill.

18. Your Orator further shows that said lands at the time the original taxes were assessed did not cover the same area that the lands now cover. That at various times by acts of the Legislature and War Department the boundaries of the lands have been extended. That the Commissioners of Adjustment in their report have taken no cognizance of this but have levied a new lien for the old taxes upon the lands as now existing, which action as your Orator claims and insists is illegal and unconstitutional as taking private property for public purposes without compensation and as taking

property without due process of law and denying to your Orator the equal protection of the law.

That your Orator denies the validity and priority and extent of the alleged amount of said taxes, but that no suit is pending to test the validity of the said taxes and the encumbrance claimed on account thereof.

19. Your Orator further shows and charges that the matters in dispute amount exclusive of interest, to the sum of over two thousand dollars; that the amount of said adjusted taxes exclusive of interest and costs is the sum of one hundred and eight thousand two hundred and thirty-nine dollars and twenty cents; that the value of your Orator's leasehold rights in said lands and premises exceeds the sum of two thousand dollars, and the value of said lands and premises exceeds the sum of two thousand dollars.

76 In consideration whereof and forasmuch as your Orator is without remedy in the premises at and by the common law and can only have adequate relief in a Court of Equity, where matters of this sort are properly relievable.

To the end therefore that the said defendants, the Mayor and Alderman of the City of Jersey City, Robert Davis, City Collector of the City of Jersey City may full, true and perfect answer make, without oath, to all and singular the matters aforesaid, as if the same were again repeated and they and each of them interrogated thereto, and that it may be ordered by the decree and order of this Honorable Court, that the said Mayor and Aldermen of the City of Jersey City have no estate or interest in or encumbrance upon said lands and premises or any part thereof, and that Robert Davis, City Collector of the City of Jersey City may be restrained from receiving said report and from filing the same so far as it affects the lands and premises of your orator, and may be restrained from transmitting the same to any officer of Jersey City having custody of records showing liens for taxes, assessments and water rates, so far as it affects the lands and premises of your orator, and they and each of them may be restrained from selling or attempting to sell the lands and premises mentioned and described in your orator's Bill of Complaint, and that your orator may have the relief prayed for in the original Bill of Complaint and also such other and further relief in the premises as the circumstances of the case may require, and as to your Honor shall seem meet.

May it please your Honor, the premises considered to grant unto your Orator not only the writ of injunction issuing out of and under the seal of this Court directed to the defendants restraining them as above set forth, but also the State's writ of subpœna issuing out of and under the seal of this Honorable Court to be directed to the Mayor and Aldermen of the City of Jersey City, Robert Davis, City Collector of the City of Jersey City, commanding them and each of them on a certain day, and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer the premises, stand to, abide by and perform such order or decree as the nature of the case may require

and as to your Honors shall seem agreeable to equity and good conscience.

And your orator, as in duty bound, will ever pray, etc.

ZEGENER & LANE,
Sol. Comp.

MERRITT LANE,
Of Counsel.

77 United States Circuit Court, Third Circuit, District of New Jersey.

In Equity. Suit No. One.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY et al., Defendants.

On Bill.

Answer.

(Filed November 19, 1908.)

The Answer of the Mayor and Aldermen of Jersey City and Robert Davis, City Collector of Jersey City, the Defendants, to the Supplemental Bill of Complaint of Daniel J. Leary.

The said Defendants answering said bill of complaint, or so much and such parts thereof as these Defendants are advised it is material or necessary for it to make answer unto, answering say:

First. That the matters contained in the first paragraph of said bill of complaint are true except that these defendants have no knowledge of the allegation that the Complainant is a citizen of the State of New York, and leave the Complainant to prove the same as this honorable Court shall direct.

Second. That the allegations contained in the second paragraph of said bill are true. These Defendants further answering say that the said Complainant, by his Counsel, Merritt Lane, appeared before the said Commissioners of Adjustment at several hearings of said Commissioners and presented testimony to show that the taxes as originally laid on the premises in question were excessive and should be reduced by said Commissioners.

Third. That it is true as set forth in the third paragraph of said bill that the said taxes which were reported as adjusted by said Commissioners of Adjustment aforesaid are the same alleged taxes mentioned and set forth in the original bill of complaint with the exception that the taxes on said premises from 1905 to 1907 were included in said report but these Defendants deny the contention of the Complainant that said taxes are invalid and illegal and improperly attempted to be levied and assessed upon the lands and interests

mentioned therein but claim and insist that said contention is without foundation in law or in fact.

78 Fourth. That the matters set forth in the fourth paragraph of said bill are true.

Fifth. These Defendants deny the allegations contained in the fifth paragraph of said bill but these Defendants say that as soon as it is determined what the taxes on the premises in question should be and as soon as the injunction obtained in this Honorable Court by the Complainant restraining said City Collector from selling the lands and premises mentioned and described in said bill for the unpaid taxes and assessments mentioned in the original bill of complaint, is removed and discharged, the said Defendant Robert Davis, City Collector of Jersey City, will immediately sell or attempt to sell the said lands and premises for any liens for unpaid taxes and assessments levied against said premises by the City of Jersey City.

Sixth. These Defendants deny the contentions contained in the sixth paragraph of said bill of complaint and say that they are without foundation in law or in fact and deny that the actings and doings of said Defendants are contrary to equity and conscience, and tend to the manifest wrong, injury and oppression of the complainant.

Seventh. These Defendants deny the contention of the Complainant contained in the seventh paragraph of said bill and say that they are absolutely without foundation in law or in fact.

Eighth. These Defendants deny the contentions of the Complainant contained in the eighth paragraph of said bill and say that they are absolutely without foundation in law or in fact.

Ninth. These Defendants admit the allegation contained in the ninth paragraph of said bill that the said adjusted taxes upon said lands and premises were fixed and adjusted upon the fee of said lands but deny that said fee is in the State of New Jersey and is not subject to taxation; but these Defendants claim and insist that the complainant is the owner of the fee of said lands and premises.

Tenth. These Defendants deny the allegation contained in the tenth paragraph of said supplemental bill, and claim and insist that the reduction made by the Commissioners of Adjustment was improper and that the proper lien for taxes against said lands and premises was the amount of the taxes levied by the Tax Commissioners of Jersey City and these Defendants charge and insist that the action of the said Adjustment Commissioners in reducing said taxes was unjust and inequitable in that the original tax liens are proper liens upon the premises in question and these Defendants

79 charge and insist that such reduction, if upheld, operates to injure and affect all the other taxpayers owning property subject to taxation within the limits and confines of Jersey City. The Defendants deny that the said Adjustment invalidates the provisions of paragraph twelve, section seven, article four of the Constitution of the State of New Jersey.

Eleventh. These Defendants deny the allegations contained in the eleventh paragraph of said supplemental bill and they deny the soundness of the legal conclusions and deductions set forth in said

paragraph, whereby it is contended that the taxation of said lands and premises, and the taxation of the rights of the Complainant therein will result in diminishing the school fund of the State of New Jersey and is in violation of the provisions of paragraph six, section six, article four of the Constitution aforesaid.

Twelfth. These Defendants admit the allegation contained in the twelfth paragraph of said supplemental bill that some of the taxes which the Commissioners of Adjustment have attempted to adjust were levied and imposed more than twenty years last past, but they deny the allegation that the collection of all taxes are barred after the expiration of twenty years from the date on which they were levied and that said taxes are also barred by the Statute of Limitations; but these Defendants charge and insist that by the Charter of Jersey City and the Laws of the State of New Jersey, taxes levied by the Taxing Authorities of the City of Jersey City are made a lien on the lands and premises on which they are levied until they are paid.

Thirteenth. These Defendants deny the allegation contained in the thirteenth paragraph of said supplemental bill that the said Adjustment Commissioners have reported as tax liens upon said lands alleged taxes, the lien of which had expired at the time of the making of said report.

Fourteenth. These Defendants admit that Section two of the Martin Act provides that "the said Commissioners, in dealing with the said arrearages as matters of fact, according to their judgment of what shall be equitable, fair and just, as hereinbefore directed, shall treat the same without regard to any supposed want of jurisdiction, invalidity, irregularity or defect in any of the proceedings had for the levying, imposing or confirming of any of said taxes, assessments or water rates so in arrears" and that Section three of said Act provides that the report of the said Commissioners shall after confirmation "be a valid and binding tax, assessment and lien on the
80 lands so designated, in lieu and instead of all outstanding claims of the City *and* etc." and that such new lien has priority over all other liens or claims or demands whatsoever and they admit that said lien is paramount to the interest of the Complainant in said lands and premises.

These Defendants deny the allegation that there were no liens for taxes upon said lands and premises at the time the Complainant obtained the said assignments of lease and at the time of the making of said report; and they deny that said Act of the Legislature and the proceedings of the Adjustment Commissioners aforesaid, are contrary to the provisions of the Constitution of the United States that no person should be deprived of property without due process of law, and is contrary to the provisions of said Constitution which provides that no State should pass any Law impairing the obligation of contracts.

These Defendants deny the allegation that the said lease from the State now held by the Complainant provides for no taxation and that said lease and assignment are impaired if the said taxes are created liens upon said lands prior and paramount to the interest of the

Complainant therein: and these Defendants charge and insist that said taxes are such liens.

Fifteenth. These Defendants deny the allegation contained in the fifteenth paragraph of said supplemental bill and particularly the allegation that the sale of the said lands and premises to collect the amount of said adjusted taxes is contrary to the Constitutional rights of the Complainant as more fully set out in the original bill of complaint and the supplemental bill.

Sixteenth. These Defendants deny the allegation contained in the sixteenth paragraph of said supplemental bill that the confirmation and filing of said report and the sale of the said lands violates constitutional rights of the Complainant; they deny that it is a denial to the Complainant of the equal protection of the law, and that it is a depriver of the property of the Complainant without due process of law and that it is a taking of the Complainant's property for public use without just compensation within the meaning of the Constitution of the United States and of the sixteenth section of article one of the Constitution of the State of New Jersey.

Seventeenth. These Defendants deny the allegations contained in the seventeenth paragraph of said supplemental bill and claim and insist that the said taxes are a legal and valid lien upon the said lands and premises.

81 Eighteenth. These Defendants deny the allegation contained in the eighteenth paragraph of said supplemental bill and the soundness of the legal contentions of the Complainant.

Nineteenth. These Defendants admit the allegations contained in the nineteenth paragraph of said supplemental bill.

These Defendants further answering charge and insist that they should not be restrained in forcing collection of the liens for taxes levied against said lands and premises because such restraint will operate to injure and affect all the other taxpayers owning property subject to taxation within the limits and confines of said City.

These defendants therefore pray to be hence dismissed with their reasonable costs in this behalf sustained.

WARREN DIXON,
Solicitor for and of Counsel with Defendants.

United States Circuit Court, Third Circuit, District of New Jersey.

In Equity. Suit No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendant-.

On Bill.

Replication.

(Filed February 27, 1909.)

The complainant joins issue on the Answer of the defendant- to the Supplemental Bill of Complaint of the complainant.

ZIEGENER & LANE,
Solicitors — Complainant.

82 United States Circuit Court, Third Circuit, District of New Jersey.

In Equity. Suit No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY, Defendant-.

On Bill.

Stipulation.

(Filed September 4, 1909.)

It is hereby consented, stipulated and agreed

First. That the statements of fact contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 11th, 12th, 14th, 17th and 19th paragraphs of the supplemental Bill of Complaint are true and shall be considered in evidence as facts.

Second. That the statements of the supplemental Bill of Complaint except where denied by the Answer are admitted to be true.

Fourth. This stipulation to be added to the stipulation formerly made herein.

Fifth. All the acts of the Legislature and Congress and parts of acts referred to in the supplement- Bill of Complaint and Answer shall be considered in evidence in the cause.

ZIEGENER & LANE,
Solicitors — Complainant.
WARREN DIXON,
Solicitor — Defendant.

83 Circuit Court of the United States, District of New Jersey.

In Equity. Suits Nos. 1 and 2.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY and ROBERT DAVIS, City Collector of Jersey City, Defendants.

On Bills.

Appearances.—Mr. Merritt Lane for the Complainant; Mr. Warren Dixon for the Defendants.

Testimony taken this Seventeenth day of March, A. D. one thousand nine hundred and nine, at the office of Hudspeth & Lane, No. 260 Washington Street, Jersey City, at ten o'clock in the forenoon, before Henry D. Oliphant, a standing examiner of the United States Circuit Court, in pursuance *with* notice and consent of parties.

It is stipulated that the testimony taken shall be used in both suits subject to all objections.

Mr. JOSEPH P. MCLEAN, a witness called on behalf of the complainant, being duly sworn, is examined as follows:

Direct examination by Mr. Lane:

Q. Mr. McLean, are you Clerk of the Board of Adjustment Commissioners?
A. I am.
Q. Were you Clerk of the Board of Adjustment Commissioners at the time the properties known as plots B. C. G. H. Blocks 1513, 1514 and lots 4B-7B, Block 1507 assessed to the Point Breeze Ferry and Improvement Company and Daniel J. Leary respectively were adjusted in report No. 113?
A. I was.
Q. You were subpœnaed to produce here to-day the records of the Adjustment Commissioners showing the adjustment made upon those plots of land. Have you done so?
A. I have.
Q. Will you produce that record?

Mr. Dixon:

Q. What book is this?
A. Record Book No. 22.

Mr. Lane:

Q. Will you turn upon that record book of the proceedings of

the Adjustment Commissioners in and for the City of Jersey
84 City to that portion referring to the adjustment of property Block 1507, lots 4B-7B.

A. On page 146 of the record book.

Q. Does that page 146 show the action of the Board of Adjustment Commissioners upon taxes in arrears on lots 4B-7B, Block 1057?

A. It does.

Mr. Lane: I offer that in evidence and request that it be marked. Marked "Exhibit A."

Mr. Lane:

Q. Mr. McLean, were you present at the time the Board of Adjustment Commissioners reached their final conclusion of this adjustment?

A. I believe so, that is, I was present at a meeting which they held at which I was instructed how to make up that report.

Q. You were instructed by the full board?

A. Yes.

Q. You made up this report in accordance with instructions from the full board and that report as drawn up by you was afterwards adopted by the Board and incorporated in report No. 113, was it not?

A. It was.

Q. Were you instructed by the board at any time to pay any attention to the difference in areas in lot 4B-7B, Block 1507 as they existed during the different years?

Mr. Dixon: I object to that as being immaterial, irrelevant and incompetent.

A. I guess the Board did that for themselves.

Mr. Lane: I move to strike out the answer and ask for a responsive answer.

Mr. Dixon: Answer yes or no.

A. I don't recall any such instructions.

Cross-examination.

Mr. Dixon:

Q. Mr. McLean, what do you mean by saying that this shows the action of the board?

A. That is a statement which shows what the original liens were and the result of the commissioners' findings as compared with those original liens.

Q. What were the original liens?

A. The original liens were tax arrears as returned from the records of the City Collector for the years 1883 to 1907 inclusive.

Q. What was the total of those?

A. $180,465.72.

85 Q. How is the information as to original liens brought to the Board of Adjustment Commissioners?

A. By official search of the City Collector.
Q. Are those official searches filed with your board?
A. They are.
Q. Do you know whether there were any hearings on the subject matter of this report embraced in this book, page 146?
A. There were hearings.
Q. Do you know whether or not at any of those hearings the property owner against whom the tax was levied on the property in question was present or a representative of his?

Mr. Lane: Objected to as not proper cross examination.

A. The legal representative of the appellant.

Mr. Dixon: I not only put it in as cross examination but as original evidence if there is any question about it.
Mr. Lane: The only objection that I have to that at this time is that I ask if you make him your own witness without notice that I be permitted to be sworn myself without notice to you.

Mr. Dixon:

Q. Who was that?
A. That was Mr. Merritt Lane.
Q. You were present at that time?
A. I was present at those times.
Q. He was there more than once?
A. Yes, sir.
Q. Do you know at whose request these various hearings of objections by the land owner were given, who instigated the original appeal or who asked for a special hearing, who asked for the special hearings at which Mr. Lane appeared?
A. The board arbitrarily set these hearings. The case was before them and they set the dates and held the hearings.
Q. Do you know who asked to have dates set permitting the property owner to be heard?
A. I think the board arbitrarily held the hearings and invited them to appear. It was a case on reference back from the court, referred back to the adjustment commissioners for their further consideration. When it became necessary for the adjustment commissioners to review the cases they notified the people to appear and state their cases.
Q. Did Mr. Lane on behalf of this property owner file a brief with your board?
86 A. My recollection fails me there. I think he filed a brief at the time the case came up on report No. 112, the previous report, and I don't think he filed a brief on this particular case.
Q. Then these properties were considered in two reports, No. 112 and No. 113?
A. Yes. And from memory I would say that they were considered in some various reports and referred back.

Direct examination.

Mr. Lane:

Q. As a matter of fact, Mr. McLean, these taxes were before the Board of Adjustment Commissioners from the inception of the board, were they not?

A. I could not answer without investigation. I would be obliged to go over the old records.

Q. And that you haven't done as yet?

A. No.

Q. And you haven't them here?

A. No.

Q. Did you examine your records to ascertain whether there is any application or appeal on behalf of Daniel J. Leary or any other owner of this land for the adjustment of these taxes?

A. I have not examined for the original appeal.

Q. Isn't it a fact that these taxes were included in the original appeal for adjustment made by the city of Jersey City?

A. I don't quite understand that question—There were arrears on these properties at the time the City made the application for the appointment of Adjustment commissioners under Chapter 112 of the laws of '86.

Q. And were not these taxes certified to the Board of Adjustment Commissioners immediately after the appointment of the Commissioners upon the application of Jersey City by the City Collector of the city of Jersey City in obedience to the act?

A. Not immediately after.

Q. Within a reasonable time?

A. Yes.

Q. And isn't it a fact, Mr. McLean, that every time I appeared before the Board representing Leary I objected to the consideration of the matter by the Board at all upon the ground that the Board had no jurisdiction or power in the premises?

A. I remember that contention being made. I couldn't say that it was on every occasion.

Q. That contention, however, was made?

A. Yes, I recall that.

Q. And it was also made in my brief?

A. I don't recall that.

87 Q. Have you my brief on file?

A. I presume I have it. I didn't go over the papers connected with report No. 112 and I suppose that would be in with those papers.

Q. Now will you turn in your book to that portion referring to the adjustment of property, Blocks 1513, 1514, plots B. C. G. H.?

A. Shown on page 143 of the record book No. 22.

Q. What you said as to what page 146 showed with respect to Block 1507, lots 4B-7B, applies to this also, does it not?

A. Yes, the record is similar.

Q. And you received no instructions with respect to this adjust-

ment to pay any attention to the different areas that the plots B. C. G. H. had during the different years, did you?

A. No, I did not.

Q. Nor did you receive any instructions to pay any attention to the fact that taxes for the years 1874, 1875 and 1876 were assessed and levied prior to the giving of any lease by the State of New Jersey?

A. Not that I recall.

Q. And your testimony with respect to my appearance before the Board of Adjustment Commissioners upon the question of the adjustment of lots 4B-1B, Block 1507 applies also to this adjustment, does it not?

A. Yes.

Q. I represented both plots and appeared and made the same objections with respect to each plot?

A. So far as I recall, yes.

Mr. Lane: I offer them in evidence. Marked Exhibit B.

Cross-examination.

Mr. Dixon:

Q. Mr. McLean, what was the total amount of arrears on this property as shown by the record book?

A. The arrears covered from 1874 to 1907 inclusive and amounted to $179,397.35.

Q. With or without interest?

A. Without interest.

Q. Now, Mr. McLean, what were the arrears of taxes for the year 1874, if you can state?

A. The arrears for the year 1874, $594.45.

Q. 1875?

A. $493.

Q. 1876?

A. $433.80.

Q. And what was the total at which the arrears of taxes and interest were adjusted.

A. The total, $143,833.84.

88 Mr. Lane:

Q. It appears, does it not, from this record, that the Adjustment Commissioners in making up their totals included a sum as an adjusted tax upon plots B. C. G. H. for the year 1874, $1,589.64?

A. Yes——

Mr. Dixon: I object to that as being incompetent, irrelevant, immaterial, illegal and hearsay. This gentleman would have no information as to what actuated the Board in arriving at this total or what they considered or did not consider, and I instruct the witness in my judgment he ought not to attempt to state anything that is not within his personal knowledge and nothing that he gets

from hearsay. The record itself, if testimony can't be given, speaks for itself.

A. That is what the record shows.

Mr. Lane:

Q. And does it not also appear that this sum of $1,589.64 is made up of the whole of the principal of the taxes assessed against these lands for the year 1874 of $594.45 plus interest from the date of levy to the date of report or $995.19?

Mr. Dixon: I object to that on the same ground as stated above.

A. It is so shown on the record.

Q. And is not that same methed of calculation indicated with respect to the years 1875 and 1876?

Mr. Dixon: Same objection as above stated.

A. It is so shown on the record.

Q. And does it not appear that down to the year 1886 the Board of Adjustment Commissioners have by their report charged the full principal of the taxes assessed for those respective years plus all the interest down to the date of the making of the report?

Mr. Dixon: Same objection.

A. I see no exception to the years mentioned.

Q. And does it not appear also with respect to the adjustment of lots 4B-7B, on page 146, that the adjustment commissioners have assessed a sum as a tax for the years 1883, 1884 and 1885 made up of the full principal of the tax levied plus interest down to the date of the making of the report.

Mr. Dixon: Same objection.

A. The record so indicates.

89 Mr. Dixon:

Q. Don't you know Mr. McLean that the statute referred to by you provides that the Adjustment Commissioners shall make an adjustment of what they think fair and equitable of all the taxes of arrears and state that sum in a specific amount?

Mr. Lane: The statute speaks for itself and it is immaterial what the witness may know.

A. I know that that is so.

Mr. JOHN C. PAYNE, a witness called on behalf of the complainant, being duly sworn, is examined as follows:

Direct examination by Mr. Lane:

Q. Mr. Payne, you are a member of the Adjustment Commission of Jersey City?

A. Yes, sir.

Q. And you have been so for how long?

A. About three years.

Q. And you were a member who sat on the adjustment of taxes on plots B. C. G. H. Block 1514, 1513, lots 4B-7B, Block 1507, Report No. 113?

A. Yes.

Q. And concurred in that report?

A. Yes, sir.

Q. You also are a member and the Secretary of the Riparian Board, are you not?

A. I am Secretary and Engineer of the Riparian Commission of the state of New Jersey.

Q. And have been so for how long?

A. About twelve years.

Q. I show you a lease made by the State of New Jersey to the Point Breeze Ferry and Improvement Company dated September 30th, 1876, and refer you to the description in that lease and the map accompanying it and ask you whether since the giving of that lease the bounds of the lands covered by it have been extended by act of the legislation and the Riparian Commissioners or of the Secretary of War?

Mr. Dixon: I object to that question. It calls for a conclusion and not a fact, unless counsel makes more definite what he means by the word "bounds."

Mr. Lane: I withdraw the question.

Mr. Lane:

Q. Under this lease made by the Riparian Commissioners the description appears to be from a point at high water mark running to the exterior line for solid filling as shown on the plan
90 for an equal apportionment among Riparian owners of land under water Between Cavan Point and Constable Hook New York Bay, dated January 7th, 1871, have you that map or plan?

A. I haven't it with me. It is in the office of records filed in the office of the Commissioners.

Q. It refers to the map that is attached and made a part of the lease. Can you tell me where that exterior line for solid filling was in the year 1876?

A. My recollection is that it was in the same place as it was in the year 1871. I must refresh my memory by an examination of the map, however.

Q. Was that line subsequently changed?

A. Yes, sir.

Q. When?

A. On October 27th, 1883.

Q. And how far further out into the bay was it then placed?

A. At the place you are considering—about 2,200 feet further out into the bay.

Q. Was it afterwards changed again?

A. Not by the authorities of the State of New Jersey.

Q. Was it changed again by the Secretary of War?

A. Yes. On August 19th, 1891, the Secretary of War fixed the

line for solid filling about 2,000 feet inside or shoreward of the Riparian Commissioners' line of 1883.

Q. And was that changed again?

A. Yes. The Secretary of War in 1900 advanced the government line about 891 feet to the outside of the Riparian Commissioners' line of 1883.

Q. And there it stands at the present time?

A. Yes, sir.

Q. And there have been no further changes in those lines?

A. Solid filling lines—no, sir.

Q. Referring to the lands covered by the lease of the State of New Jersey to the Morris and Cummings Dredging Company dated April 30th, 1881, how far further out did the riparian advancement of 1883 carry the line for solid filling?

A. About 1,900 feet.

Q. And how far in from that line did the Secretary of War's ruling of 1891 carry the line?

A. About 1,600 feet.

Q. And did the act of the Secretary of War in 1900 make the line coincident with the state line with respect to these lands also?

A. Yes, sir. State line of 1883.

Cross-examination by Mr. Dixon:

Q. Did the Board of Adjustment Commissioners have before it for consideration these maps showing the various changes at the time the taxes were adjusted and prior thereto?

91 A. They did.

Mr. GEORGE T. VICKERS, a witness called on behalf of the complainant being duly sworn is examined as follows:

Direct examination by Mr. Lane:

Q. Mr. Vickers, were you a rember of the Adjustment Commission that adjusted the taxes upon lands known as Block 1507, lots 4B-7B, Blocks 1513, 1514, lots B. C. G. H. reported in the Adjustment Report No. 113?

A. If those lots as given by you are in that report I was at that time a Commissioner.

Q. Have you a copy of that report with you?

A. I have not, and I was not asked to bring it.

Q. Mr. Vickers, when I appeared before the Board of Adjustment Commissioners did I not from the beginning question the jurisdiction of the Board to adjust these taxes?

A. You had your objection to the jurisdiction of the Board noted on the record.

Q. Did I not then state before the Board my position—that I considered that the taxes of all these arrears were before the Board by virtue of an act of the Legislature and the action of the City Collector in sending these taxes to the Board of Adjustment Commissioners for adjustment, and that I appeared in the capacity of respondent and not in the capacity of appellant.

A. I don't say that you did not, but I never heard of that until to-day at this meeting. I thought the application was originally of Leary and that since you came into the case you took this new view of the case.

Q. Did you examine the records of the Board to ascertain whether or not there is any petition or application on the part of Daniel J. Leary with respect to this adjustment?

A. I assume that to be the fact.

Mr. Lane: I want to ask the Secretary of the Board, Mr. McLean, to examine and to find out whether there is any such application, petition or anything of the kind.

Cross-examination by Mr. Dixon:

Q. Do you know, Mr. Vickers, whether report No. 112 was sent back by the Court to your Board for readjustment or rehearing at the instigation of Leary with other property owners?

A. My recollection is that Mr. Lane objected to the confirmation of the findings and they joined the city in the request to have it not confirmed, the city taking the position that it did not have notice and Mr. Lane appearing also requesting it to be returned.

92 Q. Do you know whether or not at any of these hearings had before your Board, at which Mr. Lane appeared to represent these property owners any objection was raised which involved the question of the change of line for solid filling, which changes have been mentioned by Mr. Payne in his testimony?

A. I never heard of any objection so far as the owner is concerned. Of course we had this map that Mr. Payne had before us and was aware of the change.

Mr. Dixon: I want to offer in evidence the brief that Mr. Lane filed with the Board of Adjustment Commissioners.

Mr. MERRITT LANE, being duly sworn, testifies as follows:

I am the attorney for Daniel J. Leary and have been for three or four years. I appeared before the Adjustment Commissioners in reference to the adjustment of taxes on both of these parcels of land and at the start I filed with the board, if I recollect correctly (or if I did not file, I made a verbal statement), objections to the jurisdiction of the board which were practically the same as the objections I formerly filed with the Hudson County Circuit Court on application not to confirm the report. The objections raised before the Board of Adjustment Commissioners were exactly similar to those raised before the court and I have here a copy of the record before the Hudson County Circuit Court which appears on file and I offer that record in evidence. I made no application to re-refer the report. In fact before the time expired for filing objections to the report, I filed with the Judge of the Circuit Court a petition and bond for removal together with objections, and I had the record transcribed and I filed that record with the Clerk of the United States Circuit Court. The Court refused to remove the record to the

United States Circuit Court upon the ground that the proceeding was a judicial proceeding.

It approved the bond and petition but refused to remove upon the ground that the proceeding was not a civil proceeding within the meaning of the federal statutes.

I made no application to refer back. I was present in court at the time the reference back was made. I did object to the confirmation of the report upon the grounds as stated in my formal objections filed. The City insisted that it had no hearing and demanded that the report be referred back and upon the motion of the city the report was referred back. In my subsequent
93 appearances before the board I at all times objected to the jurisdiction of the board in exactly the same way as I had in the beginning.

I examined the proceedings of the board and I could find no application or petition upon the part of Daniel J. Leary, Morris and Cumings Dredging Company or the Point Breeze Ferry and Improvement Company or any other person purporting to be the owner of these lands before such board. I did find that the taxes upon both parcels of lands were in arrears at the time the Board was originally created under the act and that they were among the taxes first certified by the City Collector in obedience to the act for adjustment. The question as to the difference in lines was before the Adjustment Commissioners because I brought it before them myself.

I offer in evidence the transcript of the record filed in the office of the Clerk of the United States Circuit Court with respect to lots 4B-7B, Block 1507, plots B, C, G, H, Blocks 1513, 1514, and I offer in evidence the refusal of the Circuit Court of Hudson County to remove this record together with the formal order of the court refusing to remove, and I offer in evidence written statements filed by me with the Board of Adjustment Commissioners in which I questioned the jurisdiction of the board and the objections I filed in the Circuit Court of Hudson County against the confirmation of the report.

I made no application for any hearing before the Board of Adjustment Commissioners. The Board of Adjustment Commissioners notified me that they were going to adjust the taxes and I appeared before them in response to that citation. This applies to the hearings under adjustment reports No. 112 and No. 113.

Mr. Dixon:

Q. Do you recall whether or not you argued before the Board of Adjustment Commissioners the several points specified in this paper of objections?

A. As to the legal objections to the taxing of the land—yes. My recollection is that I stated those legal objections and the Board immediately ruled that they had no power to consider them. I was not allowed to make any further argument upon them. I did not argue anything before the Circuit Court until after the petition for

removal had been filed and approved and the order of removal denied.

Q. That refers to report No. 113?

A. Report No. 112.

94 Q. And upon the return of report No. 113 did you argue any of these points?

A. Upon the return of report No. 113 I recall that I filed exactly the same papers that I did to No. 112 and I offer those papers in evidence.

Q. I ask when you went before the Board of Adjustment Commissioners on the return of No. 112 did you then argue any of the points?

A. The legal objections—no. The Board held that it had no jurisdiction. The Board has held from the beginning of my connection with this case that it had no time to deal with the legal objections.

Q. How has it held that?

A. By refusing to allow me to argue the legal objections that I raised.

Mr. DAVID R. DALY, a witness subpœnaed on behalf of the Complainant, appeared and was excused.

Testimony closed.

95 United States Circuit Court, District of New Jersey.

No. 1.

DANIEL J. LEARY
vs.
THE MAYOR AND ALDERMEN OF JERSEY CITY et al.

On Bill, Supplemental Bill, Answers, Stipulation, and Proofs.

In Equity. Suit to Restrain the Sale of Lands for Unpaid Taxes.

Ziegener & Lane, for Complainant.
Warren Dixon, for Defendants.

Opinion.

(Filed May 3, 1911.)

RELLSTAB, *District Judge:*

The complainant is the assignee of a certain written instrument made by the State of New Jersey on April 30, 1881, to the Morris & Cummings Dredging Company. This instrument conveyed an interest in certain lands under the waters of the Bay of New York in Jersey City. The assignment is dated February 24, 1904. Taxes have been assessed against these lands for the years 1883 to 1905,

inclusive, aggregating the sum of $163,392.24, which taxes have not been paid. On April 19, 1906, the City Collector of Jersey City gave notice that, pursuant to a resolution of the Board of Finance of Jersey City, passed March 23, 1906, and Sect. 13 of the Act entitled "An Act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in cities of this State and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages and to enforce the payment thereof, and to provide for the sale of lands subjected to future taxation and assessment," approved March 30, 1886, known as the Martin Act, he would, on May 29, 1906, sell such lands for the payment of the taxes assessed for 1883 to 1902, inclusive. No sale was had on this date, but on July 3, 1906, the City Collector advertised in a public newspaper that such sale would take place on July 24, 1906. Thereupon, on July 9, 1906, the original bill was filed to restrain such sale, etc.

Some time after the filing of such bill (the precise time does not appear) the Board of Aldermen of Jersey City, with the concurrence of the Board of Finance, caused a commission to be appointed under the said Martin Act. This commission made an adjustment
96 of such taxes, which action, however, was not confirmed by the judge of the Circuit Court of Hudson County, to whom it was reported, the report being referred back to said commission for further consideration. Subsequently the commission made another report concerning, inter alia, the lands in question, which was confirmed by the circuit judge. Thereupon the supplemental bill in this cause was filed; such further adjustment and the confirmation being made the basis of the said bill.

The complainant contends that the taxes are illegal because, first, the lands belong to the State of New Jersey and are not taxable; second, the lands are without the jurisdiction of the State of New Jersey; third, the lands are not within the taxing district of Jersey City; and fourth, the assessment was made upon real estate, and not upon the interest of the complainant therein. He also contends that the lien of the taxes has expired.

First, as to the ownership of the land taxed. This involves the legal effect of the conveyance made by the State to the complainant's assignor. The legislation relating to the State land under tide waters, as well as its conveyance, must be considered. The pertinent parts of such legislation are as follows: Sec. 4 of the supplement to the act entitled "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in the State," approved April 11, 1864, which supplement was approved March 31, 1869 (Gen. Stat. N. J., p. 2787.)

"That in case any person or corporation who by any legislative act, is a grantee or licensee, or has such power or authority, or any of his, her or their representatives or assigns shall desire a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, conveying the land in the proviso to the third section mentioned whether under water now or not, and

the benefit of an express covenant, that the State will not make or give any grant or license power, or authority affecting lands under water in front of said lands, then and in either of such cases, such person or corporation, grantee or licensee, having such grant and license, power or authority, his, her or their representatives or assigns on producing a duly-certified copy of such legislative act to said commissioners, and in case of a representative or assignee also satisfactory evidence of his, her or their being such representative or assignee, and requesting such grant and benefits as in this section mentioned, shall be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned; and the said commissioners or any two of them, with the governor and attorney-general for the time being, to be shown by the gov-
97 ernor signing the grant, and the attorney-general attesting it, shall and may execute and deliver and acknowledge in the name and on behalf of the State, a lease in perpetuity to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his, her or their securing to be paid to the State an annual rental of three dollars for each and every lineal foot measuring on the bulkhead line, or a conveyance to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation in fee, upon his, her or their paying to the State fifty dollars for each and every lineal foot measuring on the bulkhead line, in front of the land included in said conveyance; provided that no corporation to whom any such grant, license, power or authority was given by legislative act as aforesaid, in which provision was made for the payment of money to the treasurer of the State for each and every foot of the shore embraced and contained in the act, nor the assigns of such corporation, shall be entitled to the benefits of this section; and provided further, that the said commissioners shall in no case grant lands under water beyond the exterior lines hereby established, or that may be hereafter established, but the said conveyance shall be construed to extend to any bulkhead or pier line further out on said river and bay that may hereafter be established by legislative authority; in case any person or corporation taking a lease under this section, shall desire afterwards a conveyance of all or any part of the land so leased, the same shall be made upon the payment of the said sum of fifty dollars for every such lineal foot, as aforesaid, of the land so desired to be conveyed, the conveyance or lease of the commissioners under this or any other section of this act, shall not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his, her or their heirs and assigns, to exclude to the exterior bulkhead line, the tidewater by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses, and so far as the upland from time to time made shall adjoin

the navigable water, the said conveyance or lease shall vest in the grantee or licensee, individual or corporation, and their heirs and assigns, the rights to the perquisites of wharfage, and other like profits, tolls and charges."

And Section 8 of the same supplement, Id. p. 2788:

"That if any person or persons, corporation or corporations, or associations, shall desire to obtain a grant for lands under water which have not been improved, and are not authorized to be improved, under any grant or license protected by the provisions of this act, it shall be lawful for any two of the said commissioners concurring, together with the governor and attorney-general of the State, upon application to them, to designate what lands under water for which a grant is desired lie within the exterior lines, and to fix such price, reasonable compensation, or annual rentals for so much of said lands as lie below high water mark, as are to be included in the grant or lease for which such application shall be made, and to certify the boundaries, and the price, compensation or annual rentals to be paid for the same, under their hands, which shall be filed in the office of the secretary of state; and upon the payment of such price or compensation or annual rentals, or securing the same to be paid to the treasurer of this state, by such applicant, it shall be lawful for such applicant to apply to the commissioners for a conveyance, assuring to the grantee, his or her heirs and assigns, if to an individual, or to its successors and assigns, if to a corporation, the land under water so described in said certificate; and the said commissioners shall, in the name of the State, and under the great seal of the State, grant the said lands in manner last aforesaid, and said conveyance shall be subscribed by the governor, and attested by the attorney-general and secretary of state, and shall be prepared under the direction of the attorney-general, to whom the grantee shall pay the expenses of such preparation, and upon the delivery of such conveyance, the grantee may reclaim, improve and appropriate to his and their own use, the lands contained and described in the said certificate; subject, however, to the regulations and provisions of the first and second sections of this act, and such lands shall thereupon vest in said applicant; provided that no grant or license shall be granted to any other than a riparian proprietor, until six calendar months after the riparian proprietors shall have been personally notified in writing by the applicant for such grant or license, and shall have neglected to apply for the grant or license, and neglected to pay, or secure to be paid, the price that said commission shall have fixed; the notice in the case of a minor shall be given to the guardian, and in case of a corporation to any officer doing the duties incumbent upon president, secretary, treasurer or director, and in case of a non-resident, the notice may be by publication for four weeks successively in a daily newspaper published in Hudson County, and in a daily newspaper published in New York City."

Section 1 of another supplement, approved March 27, 1874, Id. p. 2791:

"That from and after the passage of this act it shall be lawful, for the riparian commissioners, or any three of them therein concurring, together with the governor of this State, to fix and determine, within the limits prescribed by law, the price or purchase-money, or annual rental to be paid by any applicant for so
99 much of lands below high-water mark, or lands formerly under tide-water belonging to this State as may be described in any application therefor duly made according to law; and the said commissioners, or any three of them therein acting and concurring, with the approval of the governor, shall in the name and under the great seal of the State, grant or lease said lands to such applicant accordingly; and all such conveyances or leases shall be prepared by the said commissioners or their agents at the cost and expense of the grantee or lessee therein, and shall be subscribed by the governor, and at least three of said commissioners, and attested by the secretary of state."

Section 1 of the "Joint resolution relative to the riparian commission," approved March 17, 1870, Id. p. 2796:

"That the riparian commissioners may and shall, in all leases, as well those authorized by the eighth section as those authorized by the fourth section of the act of last year, relating to the subject of lands under water, covenant on behalf of the State that the State will at any time accept the capital sum of which the annual payment is the interest, at the rate of seven per centum per annum, in lieu of all further annual payments, and make conveyance of the fee simple and may convey or lease to any exterior line hereafter to be fixed; and such lease or conveyance under said eighth section and this resolution shall, in all respects, be as effectual to pass all the perquisites of wharfage and other like profits, tolls and charges, as conveyances and leases under the fourth section would be."

Section 1 of the act entitled "An act relative to the riparian commission," approved April 6, 1871, Id. p. 2796:

"Whereas, Applications are frequently made to said commission for grants and leases of lands which were heretofore, but are not now, under tide-water, and it is desirable to quiet the possession of those who so apply, but doubts have arisen whether such cases are now provided for by law; and it has been found by experience that grants and leases containing the grants and covenants authorized by the fourth section of the act approved March thirty-first, one thousand eight hundred and sixty-nine, entitled 'Supplement to an act entitled "An act to ascertain the rights of the State, and of riparian owners, in the lands lying under waters of the bay of New York, and elsewhere in the State,"' approved April eleventh, one thousand eight hundred and sixty-four, and the joint resolution of one thousand eight hundred and seventy, are more readily accepted, and are more satisfactory, than those which do not contain the same.

"Sec. 1. That the said commissioners with the concurrence of the governor and attorney-general, in all cases of application for grants or leases of land now, or at the time of the application,
100 or at the time of the lease or grant, under tide-water; and in all cases of application for grants or leases of lands which are

not now, or shall not at the time of the application, or at the time of the lease or grant be under tide-water, and in all cases of applications for leases or grants for all or any of such lands may, notwithstanding the first proviso of the fourth section of said supplement, or any other clause or matter in said supplement contained, grant or lease, or lease first with a covenant to grant, and grant afterwards, for such principal sum that the interest thereof at seven per centum will produce the rental, such lands, or any part thereof lying between what was, at any time heretofore, the original high-water line and the exterior lines established or to be established, and grant or lease in all cases in which, in their discretion, they shall think such grant or lease should be made, such rights, privileges and franchises as they are authorized to grant in cases coming directly within the said fourth section, and enter into the same covenants in the name of the State, in all cases of grants or leases where they deem such covenants proper, as are authorized in grants or leases under said fourth section, and insert such other covenants, clauses and conditions in said grants or leases as they shall think proper to require from the grantee or lessee, or ought to be made by the State; provided, that nothing herein contained shall authorize grants or leases in front of a riparian owner to any other than such riparian owner, except upon the proceedings and conditions in said supplement provided; and provided also, that the applications for grants or leases, and the certificates of said commissioners, governor and attorney-general, may in the cases hereby provided for, vary from the provisions of the said supplement in such manner as to conform to this act, and any party who has already asked for or accepted a lease or conveyance may apply for and have the benefits of this act, notwithstanding such former application or former acceptance of a lease or conveyance."

The instrument of April 30th, 1881, recites that the Morris and Cummings Dredging Company, pursuant to the act of March 31, 1869, and other statutes and joint resolutions of New Jersey, being the owner of lands fronting on New York bay and "desirous of obtaining a lease for the lands under water hereinafter leased which lie in front of said lands," had applied to the commissioners appointed under the act of March 31, 1869, and the governor, "for a lease of the lands hereinafter leased," that it has applied to them "to fix the price and reasonable compensation and the annual rental for the lease of so much of said lands under water as lie below high water mark, and may properly be included in the lease, and the boundaries and the price, reasonable compensation and the annual rental to be paid for the same," that in compliance with the applica-
101 tion the commissioners had "agreed to lease the lands hereinafter mentioned, and determined that the sum of $4,233.60 as the annual rental to be paid for said lands under water so designated, and did fix the sum of $60,480.00 as the price or reasonable compensation on payment of which a conveyance of all or any part of the said lands free from rent would under said act be made," that the applicant had secured to be paid to the treasurer of the state the above mentioned annual rental, and that it had "applied to the said commissioners for a conveyance assuring to it, its successors and

assigns, the land under water hereinafter described." After this recital, the instrument proceeds to declare that "the said State of New Jersey, by the said commissioners, the governor concurring, in consideration of the premises and of the rent, covenants and conditions hereinafter contained, doth hereby bargain, sell, lease, and convey unto the said the Morris and Cummings Dredging Company, and to its successors and assigns forever," the tract of land for which "a conveyance" had been sought, which is described by metes and bounds, "and also the right, liberty, privilege and franchise to exclude the tide-water from so much of the lands above described as lie under tide-water by filling in or otherwise improving the same, and to appropriate the land above described to their exclusive private use." The instrument then declares that the grantee is "to take, to have and to hold, use, exercise and enjoy the said lands and premises, and all the rights, liberties, privileges, franchises and perquisites aforesaid, exercisable within and over, or with reference to the same, to and for the said several uses, intents and purposes, and in the manner and form that they are above granted unto the said the Morris and Cummings Dredging Company, and to its successors and assigns, forever, subject to the regulations now imposed by law on the exercise of the said rights of property hereby granted, and to such as shall hereafter lawfully be made, yielding and paying therefor unto the said State of New Jersey the annual rent of $4,233.60, to be paid to the State of New Jersey by the said the Morris and Cummings Dredging Company, its successors and assigns, in two equal half-yearly payments, one-half thereof on April 30th, and the other on October 30th, in each and every year forever, the first payment to be made on October 30, 1881." Then follows a covenant by the grantee, on behalf of itself and its successors and assigns, for the payment of the rent, a provision authorizing the State, in case any installment of rent shall not be paid when due, "into the said tract of lands hereby leased to re-enter and the same and every part thereof, and all improvements, and all the rights, liberties, privileges and franchises aforesaid, to have, possess and enjoy." Lastly, follow covenants by the State that "a conveyance will be made to the
102 Morris and Cummings Dredging Company, its successors and assigns, of the said lands, rights, privileges and franchises, or any part thereof it or they may desire, free and discharged from the whole or of an equitable portion of the said rent, on paying to the said State the sum of $60,480.00, or an equitable portion thereof, and upon application duly made therefor," and that the State "will not make or give any grant, license, power or authority to any other person or corporation affecting lands under water in front of said lands hereby leased."

This instrument must be construed in the light of the legislation by which it was authorized. That legislation, as we have seen, declared by section 4 of the act of March 31, 1869, that the commissioners are authorized to execute "a lease in perpetuity" to the grantee, his heirs and assigns, if an individual, or if a corporation, to its successors and assigns, upon an annual rental being secured to the State, and that such lease should not merely pass the title to the lands

therein described, but the right to exclude the tide-water by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses, and to the right to the perquisites of wharfage and other like profits, tolls and charges. By section 8 of the same act the commissioners are authorized to "fix such price, reasonable compensation or annual rentals for so much of said lands as lie below high water mark as are to be included in the grant or lease," and to execute "a conveyance assuring to the grantee, his or her heirs and assigns" if an individual, or to its successors and assigns if to a corporation, the lands described in the conveyance, and declares that "such grantee may reclaim, improve and appropriate to his and their own use such lands," and that "such lands shall thereupon vest in said applicant. These provisions clearly authorize the conveyance, even though it be by what the statute calls a lease, of an inheritable estate, that is, of an estate in fee. There is nothing in the joint resolution of March 17, 1870, the act of April 6, 1871, or the act of March 27, 1874, that repeals such authority. What the State did in the present case was to convey to the Morris and Cummings Dredging Company an estate in fee simple, with reservation of an annual rent. The instrument itself shows an intent to convey such an estate. Instead of conveying the lands therein described by the technical words of a lease "demise, grant and to farm let," they are conveyed by the words "bargain, sell, lease and convey." Instead of conveying the lands to the grantee, its successors and assigns, for a term of years, they are conveyed to the grantee, its successors and assigns forever. The habendum and tenendum clause runs to the grantee, its successors and assigns forever.

103 By this instrument the State parted with the whole estate as effectually as if the consideration had been paid in one sum. The instrument contemplated two methods of paying the consideration, an annual sum equal to seven per cent. of the entire consideration, as directed by the joint resolution of March 17, 1870, and a lump sum, at any time at the option of the purchaser, whereupon another conveyance was to be executed and the annual payments cease. The right, title and interest of the purchaser were the same whichever method of payment was adopted. So long as the purchaser made the annual payments the estate vested in it was as absolute as if the entire capital sum had been paid in the first instance. The use of the words "lease" and "rent" does not change the quality of the estate where the whole interest is conveyed. Substance, not form, controls. A lease never conveys all that the owner has. That at some time, and by the very terms of the instrument itself, the estate shall revert to the lessor, his heirs or assigns, is of the essence of a lease. In the present case a default in the annual payments causes a forfeiture; but this is not the necessary result of the terms of the conveyance. It provides for such a contingency, but does not require it. The conveyance transferred the whole estate to the purchaser. Only his disregard of the terms can end it and cause a reversion. Cook vs. The Mayor and Council and City of Bayonne, et al., 77 Atl. Rep. 1048, decided by the New Jersey Supreme Court since the argument in the present case, is directly in point. It was there held:

"An instrument calling itself a 'lease' made by the Riparian Commission of this State for lands under water, pursuant to the statutes of 1869 and 1871 (3 Gen. St. 1895, pp. 2788, 2790), which 'bargains, sells, leases and conveys' to the grantee 'her heirs and assigns forever' with habendum in fee and reservation of annual rental with right of re-entry and of distress in case of non-payment expressly reserved, and covenanting for a further conveyance free and discharged of the rent on payment of a stipulated gross sum, is a grant in fee subject to a rent charge, and the land therein described is taxable in the hands of the grantee."

I concur in the defendants' contention that the estate conveyed is an estate in fee simple, with a condition subsequent, the condition being that if the annual payments are not made when due, the estate may be defeated, and that the land described in the instrument made by the State of New Jersey to the complainant's grantor is taxable in his hands.

The second contention, viz., that the lands are without the jurisdiction of the State has been decided adversely to the complainant by the United States Supreme Court in Cent. R. R. of N. J. vs. Jersey City, 209 U. S. 473.

104 Third. Is the land within the taxing district of Jersey City? By the tenth stipulation it is agreed that if the lands in question became a part of Jersey City, they became so under the provisions of section 1 of the act to reorganize the local government of Jersey City, approved March 31, 1871, sections 1 and 4 of the act of February 4, 1673, consolidating Jersey City and Greenville, and section 1 of the act of March 18, 1863, incorporating the township of Greenville. An examination of these provisions alone makes it impossible to determine the exact New York Bay front boundary of Jersey City, at the time of the filing of this bill, so far as it relates to the locus in quo.

None of these gives the boundaries of the township of Greenville. Section 2 of the latter act, read in connection with section 1 thereof, does give such boundaries, which are as follows:

"On the southeast by New York Harbor, on the west by the Morris Canal, and lands of James Currie, Esquire; on the northwest by Newark Bay and the Hackensack River; on the northeast by a road or lane known as Myrtle avenue, with a continued line running southeasterly from said avenue to New York Harbor, and northwesterly from said avenue to the Hackensack River (this last boundary being the unadjusted dividing line between the 'town of Bergen' and the township hereinafter incorporated.)"

As the locus in quo is admittedly in New York Harbor and contiguous to the upland formerly a part of Greenville, the question whether it is a part of the taxing district of Jersey City depends upon whether it was a part of Greenville before its consolidation with Jersey City. "On the southeast by New York Harbor" is the pertinent course. "Harbor" has a more extended meaning than "shore." By the shore of a tidewater bay is usually meant the part between ordinary high and low water marks, alternately covered and left dry by the ordinary flux and reflux of the tides. Tyler Law of Boundaries, page 33. A harbor is a port or haven for ships; a sheltered re-

cess in the coast line of a sea, gulf, bay, or lake, most frequently at the mouth of a river (Cent. Dict. and Cyclo.) in which ships can moor and be sheltered from the fury of the winds and heavy seas. A finding that a harbor extends to a line inside of which large numbers of vessels may find protection from storms, is correct. Rowe vs. Smith, 51 Conn. 266-271.

The legislative intent in the use of the words employed in running a water boundary, governs, rather than the literal meaning of the words. The words "to," "on," "by," "at," "along," a non-tide water stream, presumptively carry title as far into the stream as the grantor possesses. "Any boundary at tide water, by whatever name—whether sea, harbor, or bay—includes the land below the high water mark, as far as the grantor owns." City of Boston
105 vs. Richardson, 95 Mass. (13 Allen) 146, 155. In Atty. Gen. vs. Del. & Bound Brook R. R. Co., 27 N. J. Eq., 631, 639, the Court of Errors and Appeals held that no rule is more firmly settled than "that grants of land bounded upon or along rivers above tide water carry the exclusive right and title of the grantee to the center of the stream, unless the terms of the grant clearly denote the intention to stop at the edge or margin of the river." This presumption, however, does not exist where the grantor is the State, unless the intention to so convey is clear. But it must not be overlooked that on this question of legislative intent we are not considering a grant of a title to the soil under the tide water, but the ascertaining of the extent of the territorial jurisdiction of one of the municipalities created by the State, to which the State has delegated some of its sovereign powers, and upon which it has imposed the burden of exercising some if its sovereign prerogatives. The terms used by a sovereign in such grants are not to be subjected to the strict rule of construction as when it grants title to some of its territory to a private grantee. The legislative purpose sought by such territorial subdivision is to be kept in mind.

In McCannon vs. Sinclair, 2 El. & El. (Q. B.) 53, Held, that where a parish comes down as far as the bank of a river—a navigable stream—there is a prima facie presumption that it extends as far as the middle of the river, and that a pier extending beyond low water mark, was subject to the poor rates.

In Rex vs. Landulph, 1 Moody & R. N. P. Rep. 393, Held, that where two parishes are separated by a river, and there is no positive evidence of the boundary line between them, it is presumed that the boundaries coincide with the middle line of the channel.

Luke vs. Brooklyn, 43 Barb. 54; Aff. 1 Abb. Dec. 24. Held,

"For the purpose of ascertaining whether particular property is situated within the City of Brooklyn, the line of low water, as the water flows in the East River, after the land is reclaimed from the river, or by the erection of wharves and piers, and the filling in from the shore for the purpose, is to be deemed the dividing line between the cities of New York and Brooklyn.

"The jurisdiction of the City of Brooklyn must from necessity follow the shore as it advances into the river, or bay whether the accretion proceeds from alluvion or artificial deposits and erections."

Admittedly, the County of Hudson, of which Jersey City is a territorial subdivision, extends to the line between New Jersey and New York, embracing the locus in quo. The language of Judge Pratt in Tebo vs. Brooklyn, 10 N. Y. Supp. 749, is so apt to this situation as to justify its insertion here:

106 "The respondent concedes that the lands under water in Gowanus Bay form a part of the county of Kings, but claim that those lands fall within no town. To quote from respondent's printed argument: 'The county of Kings includes such land under water, the line running from Red Hook Point to the west, along the southern boundary of New York County to the centre of the main channel to the ocean, but the lands under water fall within no town.' The idea that land may be within a county and yet fall within no town, is so peculiar that clear evidence would be required to satisfy us that such has been the legislative intent. We do not find such evidence. On the contrary, section 1 of the Charter of 1854 seems to assume that the city of Brooklyn is bounded by the bay of New York, clearly implying that Gowanus Bay is included within the limits of Brooklyn."

The territory of the State extends to the middle of New York Bay or Harbor. The question of boundaries here is not between municipalities of the same sovereignty. There is nothing in the acts creating the township of Greenville out of the town of Bergen, or of the town of Bergen, out of the township of Bergen, or of the township of Bergen out of the County of Bergen, or of the County of Bergen, that suggests a legislative intent to exclude from such boundaries a portion of the State's territory lying between the upland and its exterior boundary lines in New York Bay. In such case the presumption is first, that in the dividing of the State's territory into counties, all of it, for government purposes, was intended to be included; and second, that in the subdividing of the County of Bergen, the same legislative intent was carried out."

The legislation of the State founded upon the constitutional mandate, enacted before the State granted the lands in question and during the years that the taxes challenged were imposed, requires that all property not expressly exempted be taxed, and that lands be assessed to the owner thereof. Acts of March 17, 1854, and March 19, 1891, Gen. Stat. N. J., p. 3350, 3345. The same requirement still obtains. Act of April 8, 1903, P. L. 397, secs. 5 and 6.

To admit the contention of complainant under this head, a class of property than which none is more valuable, would escape taxation; not by express legislative exemption—the only way indicated in the cited enactments—but by a narrow construction of the word "on" in running the Harbor boundary. Such a rule of construction is not permissible in view of the State's policy, clearly indicated by legislation granting title to lands under tide water, requiring the taxation of all property within the State, and subdividing the entire territory of the State into taxing districts, to impose and collect such taxes.

107 The fourth ground, "that assessment was made upon real estate and not upon the interest of the complainant therein," is disposed of by the conclusion reached on the first ground.

The remaining contention is that the lien of the taxes has expired. This ground is applicable only on a finding that the lands were taxable by Jersey City. As such taxability has been found, it follows that if any of the taxes are enforceable by sale of the land assessed, such sale cannot be restrained on this ground. The bill does not allege, and no claim is made, that complainant paid or offered to pay any of such taxes, and the answer specifically asserts that they were not paid, and the proofs do not show their payment. Section 151 of the act to reorganize the local government of Jersey City, approved March 31, 1871, declares, "that all taxes and assessments which shall hereafter be assessed or made upon any lands, tenements or real estate situate in said City, shall be and remain a lien thereon from the time of the confirmation thereof until paid."

Counsel for complainant contends that this provision was repealed by the act of March 17, 1882 (P. L. N. J. 130). This act is amendatory of and supplementary to the general tax act of 1846. Query, whether this act limited in its operation to the act of 1846 which did not apply to special charter provisions (Sheridan vs. Stevenson, 44 N. J. L. 371) will impliedly repeal such special legislation of 1871 applicable to Jersey City alone, and which was not repealed by the amendments to the New Jersey Constitution inhibiting special legislation adopted in 1875. A determination whether the charter provision is repealed by this later enactment is not necessary, however, in this case. Under the tax adjustment act of March 30, 1886, known, and herein referred to, as the Martin Act, and which the record shows has been invoked by the defendants to adjust unpaid taxes, some, if not all, of the taxes challenged in these proceedings, may be made the basis of a new lien. Jersey City vs. Speer, 72 Atl. Rep. 488; Aff. 76 Id. 1037. Nor is it necessary to consider the further contention that "the lien of all of the taxes prior to 1888 has expired because of the presumption that they are paid." This presumption is not one of law, but one of fact, and therefore rebuttable. In re Martin Act Commissioners of Plainfield, 21 N. J. L. J. 334. The commissioners of adjustment to whom these alleged arrearages of taxes were submitted for adjustment, had complete jurisdiction over that subject. They found such taxes were due and unpaid. Such findings in a collateral proceeding cannot be overcome by the alleged presumption of fact. Stanley vs. Supervisors of Albany, 121 U. S. 535.

In these proceedings the commission will be presumed to have proceeded according to law. If in the readjustment of the
108 taxes, the commission has included in its findings, taxes for years to which such presumption could be enforced, or for years the lien for which was lost at the time the premises passed into the ownership of the complainant, and could not thereafter be legally established against his ownership in such lands, an adequate remedy at law, by appropriate proceedings in the state courts, was at his command. Municipal operations are dependent, directly or in-

directly, upon moneys derived from taxes, and interference by injunction with the collection of such taxes legally imposed, upon the ground of laches, will be accorded only where the complainant's right is clear, the injury imminent, and the remedy at law inadequate for his protection.

The present case presents no sufficient ground for the injunctive or other relief prayed, and the bill is dismissed

United States Circuit Court, District of New Jersey.

Suit No. 1.

DANIEL J. LEARY, Complainant,
v.
THE MAYOR AND ALDERMEN OF JERSEY CITY et al., Defendants.

On Bill, &c.

Final Decree.

(Filed June 7, 1911.)

This matter coming on to be heard in the presence of Merritt Lane, Esquire, of Counsel with the Complainant, and Warren Dixon, Esquire, of Counsel with the Defendants, upon the Bill of Complaint, supplementary bill, answers and stipulations, and proofs offered on behalf of both sides, and the said matters having been considered and argument of Counsel having been heard, and it appearing to the Court that the Complainant is not entitled to the relief prayed for in the Bill of Complaint:

It is on this seventh day of June, A. D. Nineteen hundred and eleven, on motion of Warren Dixon, Esquire, of Counsel with the Defendants, ordered, adjudged and decreed and the said Court doth hereby order, adjudge and decree, that the Bill of Complaint and supplementary bill filed in this cause be and the same hereby are dismissed.

109 And it is further ordered, adjudged and decreed that the Complainant do pay to the said Defendants or to their solicitor, the costs of this suit to be taxed, and that unless so paid, execution issue therefor according to the practice of this Court.

JOHN RELLSTAB,
Judge.

United States Circuit Court, District of New Jersey.

Case No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY et al., Defendants.

On Bill, &c.

Assignment of Errors.

(Filed June 13, 1911.)

The United States Circuit Court for the District of New Jersey which entered the decree of dismissal of the complainant's said bill erred as follows:

First. In not finding that the lands upon which the taxes were levied were the lands of the State of New Jersey and not taxable.

Second. In not finding that there was no provision of law under which the lands could be taxed.

Third. In not finding that to tax the lands and to compel the complainant to pay taxes is a violation of the rights secured to the complainant by section 10 of Article I, and by the Fourteenth Amendment to the Constitution of the United States.

Fourth. In not finding that to permit the collection of taxes upon the lands is a violation of the rights of the complainant guaranteed by paragraph 16, Article I of the Constitution of the State of New Jersey.

Fifth. In not finding that to permit the collection of taxes upon the lands is a violation of paragraphs 6 and 12 of section 7 of Article IV of the Constitution of the State of New Jersey.

Sixth. In not finding that the lands were not taxable, not being within the jurisdiction of the State of New Jersey upon a proper construction of the compact between the states of New York and New Jersey, approved by the Congress of the United States.

Seventh. In not finding that the lands upon which it was
110 attempted to levy the taxes were not within the taxing district of the City of Jersey City at the time the taxes were levied.

Eighth. In not finding that the lien of the taxes for the nonpayment of which it is attempted to sell the property had expired.

Ninth. In not finding that the assessment upon which the taxes *was* based was illegal and null and void, having been made upon the fee of the real estate and not upon the interests of the complainant therein.

Tenth. In not finding that the leases held by the complainant are not subject to taxation.

Eleventh. In not finding that the lands upon which it is sought to levy the taxes receive no benefit from the tax and that to permit the City of Jersey City to tax the lands in question, so receiving

no benefit from the tax at the regular municipal rate, would be to take property without just compensation within the meaning of section 16, paragraph 1 of the Constitution of the State of New Jersey, and would be taking property without due process of law within the meaning of section 1 of the 14th amendment of the Constitution of the United States.

Twelfth. In not finding that to permit the City of Jersey City to levy taxes upon the lands in question would be to impair the obligation of the contract between the State of New Jersey and the complainant's assignors within the meaning of paragraph 1, section 10 of Article I of the Constitution of the United States.

Thirteenth. In not finding that to permit the City of Jersey City to sell the lands and the interests of the complainant therein for the payment of these taxes would deny to the complainant the equal protection of the law within the meaning of section 1 of the Fourteenth Amendment of the Constitution of the United States, no other lessee being obliged under the laws of the State of New Jersey to pay taxes assessed upon a lease, and would deprive the complainant of property without due process of law within the meaning of such section, and would be taking private property for public purposes without just compensation within the meaning of paragraph 16 of Article I of the Constitution of the State of New Jersey.

Fourteenth. In not finding that the State of New Jersey and the City of Jersey City are estopped from claiming that the instruments under which the complainant holds are leases and the complainant is not under the obligation to pay the taxes assessed, which the defendants are now seeking to collect, and in that the United States Circuit Court dismissed the Bill of Complaint and refused the relief prayed for the complainant.

MERRITT LANE,
Solicitor for, of Counsel with Complainant-Appellant.

111 United States Circuit Court, District of New Jersey.

Case No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR and ALDERMEN OF JERSEY CITY and EDWARD FREY,
City Collector of Jersey City, Defendants.

On Bill.

(Lands Leased by the State of New Jersey to the Morris & Cummings Dredging Company.)

Petition of Appeal.

(Filed June 13, 1911.)

To the Hon. John Rellstab, District Judge, one of the Judges of the Above-named Court Presiding Therein:

Daniel J. Leary, the above named complainant in the above entitled cause, feeling himself aggrieved by the order and decree made and entered by the above named court in the above entitled cause, under date of June 7, Nineteen hundred and eleven, wherein and whereby, among other things, it was and is ordered and directed that the Bill of Complaint of the complainant be dismissed and the interlocutory injunction dissolved with costs to the defendants, and that execution issue out of this court for such costs, does hereby appeal to the United States Circuit Court of Appeals for the Third Circuit, from such order and decree and from every part thereof, for the reasons set forth in the assignment of errors filed herein, and he prays that this appeal may be allowed and that a transcript of the record, papers and proceedings upon which said order or decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Third Circuit, and that a decree may be made granting the relief prayed for by the complainant in the bill of complaint and that in the meantime and until the determination of this appeal that the interlocutory injunction heretofore granted herein be continued.

MERRITT LANE,
Solicitor for Complainant and of Counsel.

112 At a stated term, to wit, at the March term, 1911, of the Circuit Court of the United States of America, of the Third Judicial Circuit, in and for the District of New Jersey, held at the court room, in the City of Trenton, on the thirteenth day of June, 1911.

Present: The Honorable John Rellstab, United States District Judge, for the Third Circuit, sitting in equity in the United States Circuit Court.

United States Circuit Court, District of New Jersey.

Case No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY et al., Defendants.

On Bill.

Order Allowing Appeal.

(Filed June 13, 1911.)

On motion of Merritt Lane, Solicitor for and of counsel with the Complainant:

It is Ordered that an appeal to the United States Circuit Court of Appeals, for the Third Circuit, from a final decree heretofore filed and entered herein be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits and stipulations and all proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals, for the Third Circuit.

And it is further Ordered that the bond on appeal be fixed at the sum of Three hundred dollars.

JOHN RELLSTAB, *Judge.*

113 United States Circuit Court, District of New Jersey.

Case No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY et al., Defendants.

On Bill, etc.

Stipulation.

(Filed June 13, 1911.)

It is consented and stipulated that the bond for costs of the appellant on appeal to the United States Circuit Court of Appeals in

the above entitled matter be fixed at the sum of three hundred dollars and no surety shall be required, and that the same when filed shall be effective as a bond for costs on such appeal.

June 7, 1911.

JAMES J. MURPHY,
(By W. D.,)
Solicitor for Defendants.

Bond.

(Filed June 13, 1911.)

Know all men by these presents, that I, Daniel J. Leary, am held and firmly bound unto the Mayor and Aldermen of Jersey City and the City Collector of Jersey City, in the just and full sum of Three hundred dollars, to be paid to the said Mayor and Aldermen of Jersey City and the City Collector of Jersey City, their heirs, successors, executors, administrators and assigns, to which payment well and truly to be made I bind myself, my heirs, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with my seal and dated this ninth day of June, A. D. Nineteen hundred and eleven.

Whereas, lately at a session of the Circuit Court of the United States for the District of New Jersey, in a suit pending in
114 said Court between the said Daniel J. Leary, complainant, and the Mayor and Aldermen of Jersey City and the City Collector of Jersey City, defendants, a decree was rendered against the said Daniel J. Leary for a dismissal of the bill of complaint and the said Daniel J. Leary did obtain from said court an order allowing an appeal to the Circuit Court of Appeals for the Third Circuit to reverse the decree in the aforesaid suit, and a citation directed to the said Mayor and Aldermen of Jersey City and the City Collector of Jersey City is about to be issued, citing and admonishing them to be and appear before the Circuit Court of Appeals for the Third Circuit, to be holden at Philadelphia, Pennsylvania:

Now the condition of the above obligation is such that if the said Daniel J. Leary shall prosecute such appeal to effect and shall answer all damages and costs that may be awarded against him if he fail to make his appeal good, then the above obligation to be void; otherwise to be and remain in full force and virtue.

DANIEL J. LEARY. [L. S.]

Signed, sealed and delivered in the presence of
JAMES S. LYONS.

This bond is approved as to form, amount and sufficiency of surety in accordance with stipulation filed.

JOHN RELLSTAB, *Judge.*

Citation.

The President of the United States to the Mayor and Aldermen of Jersey City, A. Harry Moore, City Collector of Jersey City, and James J. Murphy, Esq., their attorney, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Third Circuit, to be held at the City of Philadelphia, in the State of Pennsylvania, within thirty days from the date of this writ, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States, for the District of New Jersey, wherein Daniel J. Leary is complainant and appellant and you are defendants and respondents on appeal, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in this behalf.

115 Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this thirteenth day of June, A. D. nineteen hundred and eleven.

JOHN RELLSTAB,
District Judge, Presiding in the Circuit Court.

Service of a copy of the within citation acknowledged this 22d day of June, 1911.

JAMES J. MURPHY,
Solicitor for Defendants.

United States Circuit Court, District of New Jersey.

Suit No. 1. In Equity.

DANIEL J. LEARY
v.
MAYOR AND ALDERMEN OF JERSEY CITY et al.

Order Extending Time to File Transcript.

Forasmuch as it has been represented to me that the time allowed by the rules of the United States Circuit Court of Appeals, for the Third Circuit, for the filing of a transcript of the record of the above-entitled cause is not sufficient to allow the Clerk to conveniently prepare such transcript, and said Clerk has applied to me for an extension of said time, and because no prejudice can result from the granting of said extension:

Therefore, it is, on this twelfth day of July nineteen hundred and eleven, ordered that the time limited by said rules for the filing of said transcript be and hereby is extended until the first day of September, nineteen hundred and eleven.

JOHN RELLSTAB, *Judge.*

116 United States Circuit Court, District of New Jersey.

Suit No. 1.

DANIEL J. LEARY
v.
MAYOR AND ALDERMEN OF JERSEY CITY et al.

On Bill, &c.

Order Extending Time to File Transcript.

Forasmuch as it has been represented to me that the time allowed by the rules of the United States Circuit Court of Appeals, for the Third Circuit, for the filing of a transcript of the record of the above-entitled cause is not sufficient to allow the Clerk to conveniently prepare such transcript, and said Clerk has applied to me for an extension of said time, and because no prejudice can result from the granting of said extension:

Therefore, it is, on this first day of September, nineteen hundred and eleven, ordered that the time limited by said rules for the filing of said transcript be and hereby is extended until the thirteenth day of September, nineteen hundred and eleven.

JOHN RELLSTAB, *Judge.*

United States Circuit Court, District of New Jersey.

Case No. 1.

DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY et al., Defendants.

On Bill, &c.

Stipulation.

(Filed September 13, 1911.)

It is hereby consented, stipulated and agreed that the time within which the transcript may be made up and the return made to the United States Circuit Court of Appeals is hereby extended to the 16th day of October, 1911.

MERRITT LANE,
Solicitor for Complainant.
JAS. J. MURPHY,
[W. D.]
Solicitor for Defendants.

117 United States Circuit Court, District of New Jersey.

Suit No. 1.

Between DANIEL J. LEARY, Complainant,
and
MAYOR AND ALDERMEN OF JERSEY CITY et al., Defendants.

Stipulation.

(Filed October 16, 1911.)

It is hereby consented, stipulated and agreed that the time within which the transcript may be made up and the return made to the United States Circuit Court of Appeals is hereby extended until the 16th day of November, A. D. 1911.

MERRITT LANE,
Sol'r for Complainant.
JAS. J. MURPHY,
Sol'r for Defendants.

United States Circuit Court of Appeals, Third Circuit.

Case No. 1.

Between DANIEL J. LEARY, Complainant,
and
MAYOR AND ALDERMEN OF JERSEY CITY et al., Defendants.

On Appeal, etc.

Stipulation.

(Filed November 16, 1911.)

The time within which the transcript may be made up and transmitted to the Circuit Court of Appeals is hereby extended until the 16th day of December, 1911.

MERRITT LANE,
Solicitor for Complainant.
WARREN DIXON,
Solicitor for Defendants.

118 United States Circuit Court, District of New Jersey.

Suit No. 1.

DANIEL J. LEARY, Complainant,
and
MAYOR AND ALDERMAN OF JERSEY CITY, Defendants.

On Bill, Etc.

Stipulation.

(Filed December 16, 1911.)

It is hereby consented, stipulated and agreed that the time within which the transcript may be made up and returned to the United States Circuit Court of Appeals be extended until the 29th day of December, 1911.

MERRITT LANE,
Attorney for Complainant.
JAMES J. MURPHY,
By (W. D.),
Attorney for Defendants.

United States Circuit Court, District of New Jersey.

Suit No. 1.

DANIEL J. LEARY
vs.
THE MAYOR AND ALDERMAN OF JERSEY CITY et al.

On Bill, Etc.

Order Extending Time to File Transcript.

Forasmuch as it has been represented to me that the time allowed by the rules of the United States Circuit Court of Appeals, for the Third Circuit, for the filing of a transcript of the record of the above-entitled cause is not sufficient to allow the Clerk to conveniently prepare such transcript, and said Clerk has applied to me for an extension of said time, and because no prejudice can result from the granting of said extension:

119–120 Therefore, it is, on this Twenty-ninth day of December, nineteen hundred and eleven, ordered that the time limited by said rules for the filing of said transcript be and hereby is extended until the fifteenth day of February, nineteen hundred and twelve.

JOHN RELLSTAB, *Judge.*

Clerk's Certificate.

UNITED STATES OF AMERICA,
District of New Jersey, ss:

I, George T. Cranmer, Clerk of the District Court of the United States, for the District of New Jersey, do hereby certify that the foregoing is a full, true and complete transcript of the record in the case of Daniel J. Leary, against The Mayor and Aldermen of the City of Jersey City and Edward Fry, City Collector, of the City of Jersey City, as the same remains of record and on file in my office.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Court at Trenton, in said District, this Fourteenth day of February, nineteen hundred and twelve.

[SEAL.] GEORGE T. CRANMER, *Clerk.*

121 EXHIBIT C 6*a*.

Chapter 112 of Laws of 1886. Paragraph 13. Sec. IV.

Upon the confirmation of the said report, a certified copy of the same, with the assessment map filed therewith, shall be transmitted to the comptroller of the city, or other officer for collecting assessments, to be filed by him in his office, and thereupon the amount of said tax, assessment and lien so fixed and certified in respect of each and every lot or parcel of land included therein shall immediately become due and payable, and shall be collected by the said comptroller or said other officer without interest, if the same be paid within sixty days after the filing of such report with him, and if not so paid, then with interest from the date of such filing at the rate of six per centum per annum, and if not paid within six months from such filing, with interest at the rate of seven per centum per annum, from the date of such filing; the comptroller or said other officer shall not be required to make any demand for the payment of said tax, assessment and lien, and if, after the expiration of six months from the filing of the said report and assessment map, the amount therein certified in respect of any lot or parcel of land shall not have been collected or paid, the said comptroller or said other officer, after giving notice by advertisement as hereinafter required, shall sell the said lot or parcel of land at public auction to the highest bidder, but not for less than the amount due from the same, as appears by the said report, with interest and costs.

Sec. V, Par. 17. The comptroller or other collecting officer, shall on the receipt of the purchase money on any sale, or of bonds in lieu thereof, as provided by this act, execute and deliver to the purchaser a certificate of such sale, which shall contain a covenant on the part of the city to refund the amount paid for said lands in cash, where cash was received, and to return the bonds or obligations, where

bonds or obligations were received, without interest, in case the title conveyed by said sale shall prove invalid; upon surrender of the said certificate of sale and proof of service of the notice thereof, as hereinafter provided, upon the owners and mortgagees of the said lands and premises, the comptroller or other collecting officer shall, after the expiration of six months from the date of such service, execute and deliver to the purchaser at such sale, his heirs, devisees and assigns, a deed for said lands and premises, which shall be sealed and attested by the clerk of the city and proved in the usual manner; and such purchaser, his heirs, legal representatives or assigns, shall take a good and sufficient title to the property sold in fee simple absolute, free of all incumbrances except taxes, assessments, water rates, levied after the confirmation of said report, and except sewer assessments made and levied under the provisions of an act entitled "An act to authorize cities to construct sewers and drains and to provide for the payment of the cost thereof," approved March eighth, one thousand eight hundred and eighty-two, when the sewer assessment on the land sold was not included in the report of the commissioners, of which the said deed shall be presumptive evidence in all courts and places, and in any proceedings or actions to be by such purchasers, his heirs, legal representatives or assigns, taken, prosecuted or defended for the recovery of the possession of the property so sold as aforesaid, or in the establishment or defense of his or their title, shown as aforesaid by such deed, the title shall not fail or be defeated by reason of any irregularity or formal defect in the procedure taken under this act, upon which the sale shall have been made or the title conveyed as aforesaid, or by reason of any illegality in fixing and adjusting the tax assessment and lien, to enforce which said sale was made, or in the proceeding for collecting the same.

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Sec. VI. 22. Any person or persons having an estate in, or mortgage upon any lands and premises sold in pursuance of the fourth section of this act, whose estate or lien appears of record in the county, may at any time before the expiration of six months after notice shall have been given to him of such sale by the purchaser, his heirs or assigns, in the manner hereinafter provided, or before a deed of said premises shall have been delivered, as provided in this act, redeem said land and premises by paying to the treasurer of the city, for the use of the purchaser, his heirs or assigns, the sum paid by him at such sale, with interest at the rate of ten per centum per annum from the date of the sale, and one dollar for each notice served as hereinafter provided; and upon such redemption the city shall pay to such purchaser, his heirs or assigns, the amount received from the person redeeming. Such notice shall be in writing and shall be served by the purchaser of the property or his agent on said owner or mortgagee, either personally or by leaving the same at his place of abode with a member of his family above the age of fourteen years; in case such owner or mortgagee is a non-resident, or his residence cannot, upon due inquiry, be ascertained, then the notice may be served by publishing the same in a newspaper printed and circulating in the city for a period of six weeks, at least once in each week, and depositing a copy of such notice, within

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twenty days after its first publication, in the post office of the city, enclosed in a wrapper, post paid, directed to such owner or mortgagee at his or her last known post office address, if the same can be ascertained; inquiry for the residence or post office of such owner or mortgagee shall be made by the purchaser or his agent upon the lands purchased at the sale, if they are occupied, and wherever else in the city the same may be likely to be ascertained and also by an examination of the record of the deed or mortgage on account of which such notice is given; an affidavit shall be made by the purchaser or his agent setting forth the manner and particulars of the service and in the case the same is made by publication, setting forth what inquiry was made to ascertain the residence and post office address of such owner or mortgagee, and in such case an affidavit of the publication shall also be made by the person publishing such newspaper, or by some one in his employ having cognizance of the publication, stating the particulars thereof; and the affidavit or affidavits shall be filed in the office of the clerk of the city within one month after the date of service, and shall be prima facie evidence in all courts and places of the facts therein stated; the purchaser shall be entitled to the possession of said land immediately upon giving such notice to the owner thereof, in case the same are unoccupied, or if they are occupied, then within thirty days thereafter; and he shall have the same remedy, by writ of assistance or otherwise, in the circuit court of the county in which the city is situate, or in the court of chancery for the recovery of the possession of said lands as the purchaser of mortgaged premises at a foreclosure sale is now or may hereafter be entitled to by any law or practice of this state; provided, however, that if any estate in any of the said lands shall be held by any heir or devisee of a decedent whose estate appears of record in the county, or if any mortgage or lease shall be held by the executor or administrator of any decedent whose mortgage or lease appears of record in the county, such heir, devisee, executor or administrator shall be entitled to redeem and to have notice as aforesaid before the purchaser shall be entitled to the possession of the lands; and provided also, that the records and schedules of all sales made under this act shall be filed and kept in the same offices of the several cities wherein records of tax sales are now by law required to be kept.

Sec. XIII. Par. 55. Taxes hereafter levied, where the rate does not exceed three per centum, and assessments hereafter levied
124 and assessed on land and real estate in any city of this state, which shall remain unpaid for the space of three years from and after the time when due and payable, may, in the discretion and upon the direction of the board or body having charge or control of the finances of the city, be collected, and the land and real estate subjected thereto sold by the comptroller or other collecting officer of the city in the same manner that the comptroller or other collecting officer is in this act authorized and empowered to collect the assessment, charges or liens fixed and determined by this act, and to sell the lands subject thereto; the deed given for the same shall be executed in the same manner and shall have the same effect as if made on proceedings to enforce the taxes, assessments and liens fixed

and confirmed as in this act provided; but in such cases the deed shall not be given for the land until after the expiration of one year from the time of sale, during which time the owner or any party having any interest in or lien upon the said land may redeem the same in the manner and on the terms in this act provided.

Paragraph 63. Sales for taxes and assessments levied and assessed on lands and real estate in any city of this state after the date of the passage of the act to which this is a supplement, which shall remain unpaid for the space of two years from and after the time when due and payable, may in the discretion and upon the direction of the board or body having charge or control of the finances of the city, be collected, and the lands and real estate subject thereto sold in the manner, and according to the directions of the act to which this is a supplement, it being the intention of this section to limit the time within which such sale may be made to two years instead of three as provided in the said act.

Exhibit C 7.

Section 49 of Act Entitled "An Act for the Assessment and Collection of Taxes," Approved April 8th, 1903.

Sec. 49. All unpaid taxes on real property, with interest, penalties and costs of collection, shall be, on and after the twentieth day of December next after the assessment, a first lien on the land on which they are assessed, and paramount to all prior or subsequent alienations and descents of said land or encumbrances thereon, except subsequent taxes no writ of certiorari or other suit shall operate to stay the enforcement of the lien unless the court shall so order, and unless due notice of said order describing the land and naming the owner shall be filed as a notice of lis pendens in the office of the county clerk or register; where a sale is made in the enforcement of a tax lien, pending the existence of the lien, the lien shall pass, with the title, to the purchaser, and where such sale shall be set aside for defect in the proceedings to sell, the lien shall be thereby continued for one year after final action in the proceeding by which the sale was annulled.

Exhibit C 8.

Act to Reorganize Local Government of Jersey City, Approved March 31, 1871.

Sec. 151. And be it enacted, That all taxes and assessments which shall hereafter be assessed or made upon any lands, tenements or real estate, situate in said city, shall be and remain a lien thereon from the time of the confirmation thereof until paid, notwithstanding any devise, descent, alienation mortgage or other incumbrance thereof, and that if the full amount of any such tax or assessment shall not be paid and satisfied within the time limited and appointed for the

payment thereof, it shall and may be lawful for the board of finance and taxation to cause such lands, tenements or real estate to be sold at public auction, for the shortest term for which any person will agree to take the same and pay such tax or assessment or the balance thereof remaining unpaid, with the interest thereon, and all costs, charges and expenses, and to direct to be executed, under the common seal of the said city, a declaration of such sale, to be signed by the mayor and city clerk, and to deliver the same to the purchaser, and said purchaser, his executors, administrators or assigns shall by virtue thereof, lawfully hold and enjoy the said lands, tenements or real estate for his or their proper use, against the owner or owners thereof, and all persons claiming under him or them, until said term shall become completed and ended, etc. (proviso for method of sale).

Sec. 152. And be it enacted, That it shall be the duty of the board of finance and taxation to give notice of the expiration of the time limited for the redemption of all lands sold for assessments or taxes by virtue of this act by advertisement as aforesaid, once a week for sixty days, next preceding the expiration of the time so limited for redemption, specifying the property unredeemed and the amount due thereon; and in case any arrears of taxes or assessments shall remain unpaid, the city collector shall place the amount of said tax or assessment under the head of arrears on the next year's bill.

126 EXHIBIT C 9.

Section 1 of an Act Entitled "A Further Act Concerning Taxes, etc.," Approved March 14, 1879, General Statutes; 3353 P. L. 1879, p. 340.

Be it enacted by the Senate and General Assembly of the State of New Jersey, That any and all taxes which shall or may hereafter be laid, assessed or imposed, pursuant to the laws of this state against any person or persons or corporations, for and on account of any lands, tenements, hereditaments or real estate, situate, lying and being in this state, together with lawful interest thereon accruing, and all costs, fees, charges and expenses in relation to the levy, assessment and collection of said taxes, shall be, become and remain, from and after the date of such levy and assessment, a full and complete first and paramount lien on all the lands, tenements, hereditaments or real estate, on account of which such levy and assessment shall be made, for the space of two years from the time when such taxes so assessed were payable, and that any and all estates therein, whether legal or equitable, and any and all mortgages, alienations, devises, descents, liens and incumbrances of every kind and nature, of, in, upon or against such lands, tenements, hereditaments or real estate, shall be in every respect subject and subservient to the lien of the aforesaid taxes, interests, costs, fees, charges and expenses.

Exhibit C 10.

Supplement to Act Concerning Taxes, Approved March 14, 1879; Supplement Approved April 6, 1888, P. L. 1888, p. 372; General Statutes, 3359.

1. Any and all taxes which shall or may hereafter be laid, assessed or imposed, pursuant to the laws of this state, against any person or persons or corporations, for and on account of any lands, tenements, hereditaments or real estate, situate, lying and being in this state, together with interest at twelve per centum per annum thereon accruing, and all costs, fees, charges and expenses in relation to the levy, assessment and collection of said taxes, shall be and become, from and after the twentieth day of December next after such assessment, a full and complete, first and paramount lien on all lands, tenements, hereditaments or real estate, on account of which such levy and assessment shall be made, and while unpaid shall remain such lien for the space of two years from the said twentieth
127 day of December, and that any and all mortgages, alienations, devises, descents, liens and encumbrances of every kind and nature of, in, upon and against such lands, tenements, hereditaments or real estate, shall be in every respect subject and subservient to the lien of the aforesaid taxes, interest, costs, fees, charges and expenses.

Exhibit C 11.

P. L. 1882, p. 130, Approved March 17, 1882; General Statutes, 3360.

Sec. 1. That the first section of the act approved March tenth, one thousand eight hundred and eighty, entitled as above set forth, be and the same hereby is amended so as to read as follows:

That any and all taxes which shall or may hereafter be laid, assessed or imposed, pursuant to the laws of this State within any incorporate- city, village, borough, or other municipality of this state, against any person or persons or corporations for or on account of any lands, tenements, hereditaments or real estate situate, lying and being in such city, village, borough or other municipality, together with lawful interest thereon accruing, and all costs, fees, charges and expenses in relation to the levy, assessment and collection of said taxes, shall be, become and remain, from and after the date of such levy and assessment, a full and complete first and paramount lien on all the lands, tenements, hereditaments or real estate, on account of which such levy and assessment shall be made, for and during the period now provided for in the act of incorporation, or any supplement thereto or revision of the same, of any such city, village, borough or other municipality as aforesaid, or if no such period is provided in such act of incorporation, supplement or revision, for and during the period of three years, and that

any and all estates therein, whether legal or equitable, and any and all mortgages, alienations, devises, descents, liens and incumbrances of every kind and nature of, in, upon or against such lands, tenements hereditaments or real estate, shall be in every respect subject and subservient to the lien of the aforesaid taxes, interest, costs, fees, charges and expenses; provided, however, that nothing herein contained shall be construed to apply to any township in this state, or to conflict with any laws regulating the assessment and collection of taxes in said townships.

128 EXHIBIT C 12.

Section 2, Supplement to an Amended Act of 1888, p. 372, 1898, Approved May 17, 1898, P. L., 455.

Any and all taxes which shall or may hereafter be laid, assessed or imposed, pursuant to the laws of this state, against any person or persons or corporations for and on account of any lands, tenements, hereditaments, or real estate, situate, lying and being in this state, together with interest at twelve per centum per annum thereon accruing, and all costs, fees, charges and expenses in relation to the levy, assessment and collection of said taxes, shall be and become, from and after the twentieth day of December next after such assessment, a full and complete, first and paramount lien on all lands, tenements, hereditaments or real estate, on account of which such levy and assessment shall be made, and while unpaid shall remain such lien for the space of two years, except as hereinafter provided, from the said twentieth day of December, and that any and all mortgages, alienations, devises, descents, liens and encumbrances of every kind and nature of, in upon and against such lands, tenements, hereditaments, or real estate, shall be in every respect subject and subservient to the lien of the aforesaid taxes, interest, costs, fees, charges and expenses.

EXHIBIT C 13.

Act for Assessment and Collection of Taxes, March 19, 1891.

3. The following property shall be exempt from taxation under this act, namely:

(1) The bonds and other securities of the United States and all bonds, securities, improvement certificates and other evidences of indebtedness heretofore or hereafter issued by this state or by any county thereof, or by any taxing district or school district of this state, and the personal property owned by citizens or corporations of this state situate and being out of the state upon which taxes shall have been actually assessed and paid within twelve months next before May twentieth, being the day prescribed by law for commencing the assessment;

(2) The property of the United States and of the state of New Jersey and of the respective counties, school districts, and taxing districts when used for public purposes, but this exemption shall not include real property bought in for debts or on foreclosures of mortgages given to secure loans out of public funds or out
129 of money in court, which property shall be taxed unless devoted to public uses;

(4) After providing for exemption of buildings used for charitable purposes, provides that "no buildings used for any such purpose which may be hired for a rental, paid to a landlord, shall be exempt."

5. All property taxable under this act shall be valued by the assessors of the respective taxing districts; property omitted by the assessors may be assessed as hereinafter provided; all property shall be assessed to the owners thereof with reference to the amount owned on the twentieth day of May in each year, and the persons so assessed for personal property shall be personally liable for the taxes thereon; it shall be the duty of the state board of taxation, before the first day of April in each year to prepare suitable schedules for the use of assessors and collectors in making the lists, duplicates, statements and reports required by law.

Exhibit C 14.

Act of March 19, 1891, Gen. Statutes, 3354.

Sec. 5. That lands occupied by a person other than the owner may be assessed to the owner, or as the lands of non-residents, if owned by such; and that unoccupied lands not owned by a person residing in the taxing district shall be denominated lands of non-residents, and shall be assessed as such; and that no tax on real estate shall be void in consequence of any lands being erroneously classed or omitted from classification as the lands of non-residents or as the lands of unknown owners, nor in consequence of any omission of or mistake in the name of the rightful owner, in the assessment list or roll, but in such cases no such tax shall be collected except from the real estate assessed.

Exhibit C 15.

Act of March 17, 1854, General Statutes, 3350.

Sec. 1. That it shall be the duty of the assessors of the several townships in this state, in making their assessments, as now provided by law, to assess all lands, tenements, hereditaments and real estate, in the names of the owners thereof, respectively and to designate the same by some short description as will be sufficient to ascertain the location and extent thereof.

130 EXHIBIT C 16.

Tax Act of 1846, Approved April 14, 1846, General Statutes, p. 3287.

33. That the tenants or other persons in possession or having the care of any lands or tenements and their goods and chattels, shall be and they hereby are made liable for the payment of taxes, which are or shall be imposed on the said lands; and if any such tenant or other person shall pay, or his or her goods and chattels shall be levied on and sold to pay any such tax, it shall be lawful for him to deduct the sums paid out of the rent, or to recover the same from the landlord or owner by action of debt, with costs; provided always, that nothing in this act shall affect or extend to any contract made or to be made between landlord and tenant.

EXHIBIT C 17.

Tax Act of 1903, Approved April 8, 1903, P. L. 1903, p. 46.

The goods and chattels of the tenants or other persons in possession or having the care of any real property shall be liable for the payment of the taxes on the land and on payment may recover the same from the landlord or owner by action on contract or by deducting the sum so paid out of the rent then or afterwards due, unless otherwise provided by his contract with the landlord.

EXHIBIT C 18.

Act to Reorganize Local Government of Jersey City, Approved March 31, 1871, P. L. —.

Section 1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That Jersey City shall hereafter consist of the territory comprised within the following boundaries, to wit: beginning in the middle of the Hudson River, at a point bearing south sixty degrees east from the southeast corner of block number seventy-six as shown on the map of property of Cornelius Van Vorst; thence running northerly up the middle of the Hudson river to a point bearing south sixty degrees east from the northerly mouth of Harsimus or Mill creek; thence north sixty degrees west to the said Mill creek; thence up the middle of the said creek to the first branch thereof; thence in a northwesterly direction to the Hoboken embankment; thence southwesterly along the southerly side of said embankment to the easterly boundary line of Hudson City; thence northerly along said boundary line to a point
131 opposite the centre of Tenth street, in the City of Hoboken; thence westerly in a direct line to the centre of the

Paterson and the New York plank road; thence along the centre of said plank road to the centre of Paterson avenue; thence northwesterly along the centre of said avenue to the centre of Secaucus road; thence northerly along the centre of said road to the middle of Penhorn creek; thence southerly along the centre of Penhorn creek to the centre of Hackensack river; thence along the centre of the Hackensack River, southerly its several courses to the present boundary line between Jersey City and Greenville; thence easterly along said boundary line to the shore of New York bay; thence along said shore to the line which, before the passage of this act, divided Jersey City from Greenville; thence along said last mentioned line, its several courses, to a point in New York bay where the centre line of the Hudson River produced southerly would intersect the same; thence northerly and along the centre of the Hudson river to the place of beginning.

Exhibit C 19.

Act of Feb. 4, 1873, P. L., 203, Consolidating Jersey City and Greenville.

Section 1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That Jersey City shall hereafter consist of not only the territory hitherto comprised within its limits, but also the territory now comprised within the limits of the said township of Greenville.

Sec. 4. And be it enacted, That the territory hitherto composing the said township of Greenville shall hereafter compose a part of the sixth aldermanic district of Jersey City, and the act to which this is a supplement, and all the supplements of said act, are hereby extended to said territory and the inhabitants thereof, with the same force and effect as said act and supplements have in any other district of said City.

Exhibit C. 20.

Section 1 of Act of March 18, 1863, Incorporating Township of Greenville Being that Portion of Act Laying out Boundaries.

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That so much of the act entitled "An act to incorporate the town of Bergen," approved March eleventh, eighteen hundred and sixty-two, as applies or was intended to apply,
132 to all that southwestern part or portion of the township of Bergen, as it existed immediately previous to the passage of said act, and comprised, or nearly so, within the limits of what is known as Washington school district, number three, bounded on the southeast by New York harbor, on the west by the Morris canal and lands of James Currie, Esq., on the northwest by Newark Bay and the Hackensack River, on the northeast by a road or lane known as Myrtle Avenue, with a continued line running southeasterly from

said avenue to New York harbor, and northwesterly from said avenue to the Hackensack river; (this last boundary being the unadjusted dividing line between the "town of Bergen" and the township hereinafter incorporated) be and the same is hereby repealed.

EXHIBIT C. 21.

Paragraph 6, Section 7, Article 4, Constitution of New Jersey.

The fund for the support of free schools, and all money, stock and other property which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested and remain a perpetual fund; and in the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the state; and it shall not be competent for the legislature to borrow, appropriate or use the said fund, or any part thereof, for any other purpose, under any pretense whatever. The legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years.

EXHIBIT C 30.

Grant from Charles II to Duke of York, March 12, 1663-4.

Leaming & Spicer, Page 3, &c.

"Charles the Second, by the grace of God, King of England, Scotland, France and Ireland, Defender of the Faith, &c.
133 To all to whom these presents shall come, greeting: Know ye, that we for divers good causes and considerations us thereunto moving, have of our especial grace, certain knowledge and meer motion, given and granted, and by these presents for us, our heirs and successors, do give and grant unto our dearest brother James, Duke of York, his heirs and assigns, all that part of the main land of New England, beginning at a certain place called or known by the name of Sr. Croix, next adjoining to New Scotland in America; and from thence extending along the sea coast unto a certain place called Petuapuine or Pemaquid, and so up the river thereof to the farthest head of the same as it tendeth northward; and extending from thence to the river of Kenebeque, and so upwards by the shortest course to the river of Canada northward. And also all that Island or Islands, commonly called by the several name or names of Matowacks or Long Island, scituate, lying and being towards the west of Cape Codd and the Narrow Higansetts, abutting upon the main land between the two rivers there called or known by the several names

of Connecticut or Hudson River; together also with the said river called Hudsons river, and all the lands from the west side of Connecticut, to the east side of Delaware Bay. And also all those several islands called or known by the names of Martin's Vineyards and Nantukes or otherwise Nantukett; together with all the lands, islands, soiles, rivers, harbours, mines, minerals, quarries, woods, marshes, waters, lakes, fishings, hawkings, huntings and fowling; and all other royaltys, profits, commodities and hereditaments to said several islands, land and premises belonging and appertaining, with their and every of their apurtenances; and all our estate, right, title, interest, benefit, advantage, claim and demand of, in or to the said lands and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders; together with the yearly and other the rents, revenues and profits of all and singular the said premises, and of every part and parcel thereof; to have and to hold all and singular the said lands islands, hereditaments, and premises, with their and every of their appurtenances, hereby given and granted, or herein before mentioned to be given and granted unto our dearest brother James Duke of York, his heirs and assigns forever; to the only proper use and behoof of the said James Duke of York, his heirs and assigns forever."

134 EXHIBIT C 31.

Grant from James, Duke of York, to Berkley and Carteret, June 24, 1664.

Leaming & Spicer, Pages 9, &c.

"Now this Indenture witnesseth, that his said Royal Highness James Duke of York, for and in consideration of a competent sum of good and lawful money of England to his said Royal Highness James Duke of York in hand paid by the said John Lord Berkley and Sir George Carteret, before the sealing and delivery of these presents, the receipt whereof the said James Duke of York, doth hereby acknowledge, and thereof doth acquit and discharge the said John Lord Berkley and Sir George Carteret forever by these presents, hath granted, bargained, sold, released and confirmed, and by these presents, doth grant, bargain, sell, release and confirm unto the said John Lord Berkley and Sir George Carteret, their heirs and assigns for ever, all that tract of land adjacent to New England, and lying and being to the westward of Long Island, and Manhitas Island, and bounded on the east part by the main sea, and part by Hudson's River, and hath upon the west Delaware bay or river, and extendeth southward to the main ocean as far as Cape May at the mouth of Delaware bay; and to the northward as far as the northermost branch of the said bay or river of Delaware, which is forty-one degrees and forty minutes of latitude, and crosseth over thence in a strait line to Hudson's river in forty-one degrees of latitude; which said tract of land is hereafter to be called by the name or names of

New Ceaserea or New Jersey: and also all rivers, mines, minerals, woods, fishings, hawking, hunting, and fowling, and all other royalties, profits, commodities, and hereditaments whatever, to the said lands and premises belonging or in any wise appertaining; with their names and every of their appurtenances, in as full and ample manner as the same is granted to the said Duke of York by the before-recited Letters Patents; and all the estate, right, title, interest, benefit, advantage, claim and demand of the said James Duke of York, of, in, or to the said —— and premises, or any part or parcel thereof, and the reversion and reversions, remainder and remainders thereof."

135 EXHIBIT C 32.

Letter from Colonel Nicols, Governor of New York, to the Duke of York, 1665.

N. J. Arch., Vol. 1, p. 46, No Date Given.

(Fragment.) "I must now descend to the particular occasion of giving Your R. H. this trouble, wherein My Ld. Berkley and Sr. G. Carterett are concern'd, who, (I know also) will be so just to mee as to have mee excus'd for manifesting clearly my knowledge to Your Rl Hs. About 10 daies past Cap: Bollen shews mee a letter from my Ld Berkeley and Sr G. Carterett and therewith a grant from Your Rl Hs to them for all the lands to the West of the Hudsons River as more fully may appeare in the said graunt, wherein is comprehended all the improveable part of Your Rl Hs his Pattent and capable to receive twenty times more people than Long Island and all the remaining Tracts in Your Rl Hs his patent in respect not onely to the quantity of the Land but to the sea Coast and Delaware River the fertility of the soyle the neighborhood to Hudsons River, and lastly the faire hopes of Rich mines, to the utter discouragement of any that shall desire to live under Your Ry Hs his protection. In short, I hold myself oblig'd to give Your Rl Hs this account upon certaine knowledge having exactly considered and preferred the advance of Your Rl Hs his reputation and interest in these parts above all considerations or obligations whatsoever, and for my boldness I can at last but such a graunt would prove to Your Rl Hs, but I must charge it upon Capt Scott who was borne to make mischiefe as farre as hee is credited or his parts serve him. This Scott (it seems) aim'd at the same patent which Your Rl Hs hath, and hath since given words out that hee had injury done him by Your Rl Hs, whereupon he contriv'd and betrayed my Ld Berkeley and Sir G. Carterett into a designe (contrary to their knowledge) of ruining all the hopes of increase in this Your R. Hs his territory, which hee hath fully compleated, unless Your Rl Hs take farther order herein. Upon this tract of land several new purchases are made from the Indians since my coming, and three Townes beginning; I gave it the name of Albania, lying on the west of Hudsons River, and to long Island the name of Yoreshr as to this place, the

name of N. Yorke to comprehend all the titles of Your Rl Hs.
136 Farre be it from mee to aggrivate any thing beyond the bounds of a faithful servant, for when it may conduct most to Your Rl Hs his service, I shall as freely surrender up all parts to Your Rl Hs his pleasure as it becomes me to doe. I presume farther to propose a better and more entire tract of Land worthy of great consideration to My Ld Berkeley and Sir G. Carterett, which is that part of Delaware River, which is reduct from the Dutch, if it is not already disposed, if soe than that my Ld B & Sr. G. C. may have a hundred thousand acres all along the sea coast, which is a most noble Tract of land, but it will cost them 20,000 lbs. before it will yield a penny, and their children's children may reap the profitt, great have beene the abuses of false reports, whereof I am now fully satisfied, and yet I hope to render a satisfactory account to Your R. Hs by word of mouth, when it shall please Your R. Hs to give mee Liberty, and that your affaires heere are upon such a foundation as will not be shaken by my absence, for the present so it is that every short removall of mine produces ill Effects, and in plaine words the Towne & Country cry out they will leave their dwellings if they can not stay mee from going to Boston, such are their apprehensions of a Dutch invasion."

Exhibit C 33.

Commission to Governor Carteret, February 10, 1664-5.

Leaming & Spicer, Page 26.

"We do hereby constitute and appoint you (during our will and pleasure) Governor of all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitan's Island, and bounded by the east, part by the main sea and part by Hudson's river; and having upon the west Delaware Bay, and to the northward as far as the northermost branch of the said bay or river of Delaware, which is in forty one and forty degrees of latitude, crossing over thence in a straight line to Hudson's river in forty one degrees of latitude, now commonly called by the names of New Caesarea of New Jersey; and of all the islands, inlets, rivers and seas within the said bounds of our said province; with power to nominate and take unto you twelve able men at most, and six at least, to be of your council and assistance, or any even
137 number between six and twelve, unless we have before made choice of, or shall choose all, or any of them."

Exhibit C 34.

Instructions to Governor Carteret, February 10, 1664–5.

Leaming & Spicer, page 28.

"To our trusty and well beloved Philip Carteret, Esq., governor of all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitans Island and bounded on the main sea, and part by Hudson's river, and having upon the west Delaware bay or river, and extending southward to the main ocean as far as Cape May, at the mouth of Delaware bay; and to the northward as far as the northermost branch of the said bay or river of Delaware which is in forty one degrees and forty minutes of lattitude; and crosseth over thence in a strait line to Hudson's river in forty one degrees of lattitude, now commonly known by the name or names of New Casarea, or New Jersey; and of all the islands, inlets, rivers and seas within the said bounds of our said province, and to our trusty and well beloved councellors and assistants to our said Governor, greeting."

Exhibit C 35.

A Patent Granted to Captn. Robert Needham For an Island Called Oystr. Island.

"Richards Nicolls Esqr. &c. Whereas there is a Certaine Island wth in this Governmt lying & being in Hdusons Ryver to ye West of Long Island betweene Nutten Island & ye maine & about South South West from this ffort com'only called & knowne by ye Name of ye Great Oystr. Island it being the biggest of ye three small Islands which lye there neare or adjacent one to Another to wch. sd. Island there appeares not to be any pticuller Lawfull owner, either natives or others who have just title or do lay claime unto ye same Now Know ye that by vertue of ye Com'ission &
138 Authority unto me given by his Royal Highnesse upon whom by graunt & patent from his Ma'tie the propriety & Governmt. of Long Island & of all ye Islands adjacent (amongst other things) is settled & Confirmed for divers good causes & Considerac'ons me thereunto moving, I have given, Ratified Confirmed & Graunted and by theise pr'sents do give Ratifye Confirme & Graunt unto Captn. Robert Needham ye sd. Island com'only called ye Great Oystr. Island Scituate & being as aforesaid together wth. all ye Profitts Comodityes & Emoluments to ye said Island belonging or in any wise apperteyning, To Have & to hold &c, The Patent is dated ye 23rd of Decembr. 1667."

Book of Patents in office of N. Y. Secretary of State, vol. 2, p. 146.

Exhibit C 36.

"I Doe by theise pr'sents transport & make over all my right title & Interest to ye wth. in menc'oned Island called great Oystr. Island unto Mr. Isaack Bedlow for wch. I doe acknowledge to have received of him full Satisfacc'on. In Witness Whereof I have hereunto put my hand this 24th day of Decembr. 1667."

Book of Patents in office of N. Y. Secretary of State, vol. 2, p. 146.

Exhibit C 37.

A Confirmac'on of Little Oyster Island, Granted Unto Capt. William Dyre.

"Edmond Andros Esqr. &c. Whereas there is a Certaine small Island commonly called little Oyster Island lying Westward of this Island and City of New Yorke and North East from Great Oyster Island or Lone Island over against Communipaw the which hath been Certifyed unto mee not to belong unto any Particular Person And Capt. William Dyre having requested my Graunt of the sd. Island unto him to make Improvemnt. thereon Know Yee That by vertue of the Commission and Authority unto mee Given by his Royal Highnesse I have Given and Graunted and by these presents do Give and Graunt unto Capt. Will'm. Dyre his
139 Heires and Assignes the afore recited Island with all and singular the Appurtenances To have and to hold the said Island and Premisses unto the said Capt. Will'm. Dyre his Heires and Assignes unto the proper use and behoofe of him the said Capt. Will'm. Dyre his Heires and Assignes forever hee making Improvement on the said Island according to Law and continuing in Obedience and Conforming himselfe according to the Lawes of this Government And yielding and Paying therefore yearly and every yeare unto his Royall Highnesse use as a Quitt Rent — — — — — unto such Officer or Officers in Authority there as shall be empowered to receive the same. Given under my Hand and Sealed with the Seale of the Province in New York this — — — — day of — — — in the — — — — years of his Ma'ties Reigne Annoq. Domini 167 — —.

E. ENDROS."

Book of Patents in office of N. Y. Secretary of State, vol. 4, p. 115.

Exhibit C 38.

Charter Granted by Governor Carteret to the Town and Freeholders of Bergen, September 22nd, 1668.

Book 1 of Deeds, Patents, &c., p. 31, in Office of Secty. of State.

Winfield's History of Hudson Co., p. 105.

"This Deede Witnesseth of Charter granted to the Towne and Freeholders of Bergen, and to the Villages and Plantations thereunto belonging, cituated and being in the province of New Cesarea or New Jersey: By Honble Capt. Philip Carteret, Esqr., Governour of the said Province, and his Counsil, under the Right Honble John Lord Berkley, Barron of Stratton, and Sr. George Carteret, Knt. and Baronet, the absolute Lords Proprietors of the same, Containing the Limitts and bounds of the Jurisdiction of said Towne, togethere with the immunities and Privileges thereunto belonging and appertaining, as followeth: Imprms. The Bounds and Limitts of the aforesaid Towne and Corporation of Bergen is to begin at the North end thereof, from a place called Mordavis Meadow, lying upon the west side of Hudson's river, from thence to run upon a N. W. lyne by a three rail fence that is now standing to a place called Espatin, and from thence to a little Creek surrounding N. N. W., till it comes into Hackinsack river, containing in Bredth from the top of the Hill, 1½ miles or 120 chains, from thence it runs along the said Hackinsack river upon S. S. W. lyne till it comes to the point or neck of Land that is over against Statten Island and Shooter's Island in Arthur Cull Bay, containing in length about twelve miles, from thence to run Eastward along the River called Kill van Cull that parts Statten Island from the Maine to a point or neck of Land called Constable's Point or Constable's houck, and from thence to run up northward all along the Bay up into Hudson's river till it comes to Mordavis Meadow aforesaid; So that the whole tract of upland and Meadow property belonging to the Jurisdiction of the said Town and Corporation of Bergen is bounded at the North end by a tract of Land belonging to Captn. Nichs. Verlett and Mr. Samuel Edsall. On the East side by Hudson's river, on the South end by the Kill van Cull, that parts Statten Island and the Maine, and on the West by Arthur Cull Bay and Hackensack river, as it is more plainer demonstrated by a draught thereof, made by the Surveyor-General, hereunto annexed."

EXHIBIT C 39.

Letter from Samuel Mavericke to Lord Arlington.

N. J. Arch., Vol. 1, p. 57.

"New Yorke in America August 25th, 1668

Right Honble.

(Extract) - - - - Shortly after ye reduceing of these parts from under the Dutch to his Ma'ties, obedience, the Lord Jno Berkeley and Sir George Carterett sent over hither to take possession of a certain tract of land granted to them by His Royal Highness out of his patent, which hath proved very preujdiciall to this place and government. Their Bounds reach from the East side of Delaware River to the West side of Hudsons River includeing a vast tract of the most improveablest land within His Royall Highness his patent. It hath taken away some Dutch villages formerly belonging to this place and not above three or foure miles from it; the Duke hath left of his patent nothing to the West of New Yorke, and to the East upon the Mayne about sixten miles only from Hudsons River whereon is but one poore village, Long Island is
141 very poore and inconsiderable, and beside the Citty there are but two Dutch townes more, Sopus and Albany, which lye up North on Hudsons river. I suppose when ye Lord Berkeley had that grant, it was not thought he should come so neare this place, nor were ye inconveniencyes of it known or considered.

I shall not trouble yor Lord'p with further relation of matters here, since Coll Nicolls can give you full and particular satisfaction both in this or any thing else relateing to these parts.

Your Lordsps Most humble servant

SAMUEL MAVERICKE."

EXHIBIT C 40.

Second Grant from Charles II to Duke of York, June 29, 1674.

Leaming & Spicer, Page 41.

"Charles the Second, by the Grace of God King of England, France and Ireland, Defender of the Faith, &c. To all to whom these presents shall come greeting: Know ye that we for divers good causes and considerations, have of our special grace, certain knowledge, and meer motion, given and granted, and by these presents for us, our heirs and successors, do give and grant unto our dearest brother James Duke of York, his heirs and assigns, all that part of the main land of New England, beginning at a certain place called or known by the name of St. Croix, next adjoining to New Scotland in America; and from thence extending along the sea coast unto a certain place called Petaquine or Pemaquid, and so up

the river thereof to the furthest head of the same as it tendeth northwards, and extending from the river of Kenebeque, and so upwards by the shortest course to the river Canada northwards. And all that island or islands, commonly called by the several name or names of Matowacks or Long Island, scituate, and being towards the west of Cape Codd and the Narrow-Higansetts, abutting upon the main land between the two rivers there, called or known by the several names of Conecticut and Hudsons river; together also with the said river called Hudsons river, and all the land from the west side of Connecticut river, to the east side of Delaware bay."

142 EXHIBIT C 41.

Second Grant of Duke of York, to Carteret, July 29, 1674.

Leaming & Spicer, Page 16.

"Now this indenture witnesseth, that his said Royal Highness James Duke of York, for and in consideration of a competent sum of good and lawful money of England to his Royal Highness in hand paid by the said Sir George Carteret, before the ensealing and delivery of these presents, the receipt whereof his said Royal Highness James Duke of York, doth hereby acknowledge, and thereof doth acquit and discharge the said Sir George Carteret, his heirs and assigns for ever by these presents, hath granted, bargained, sold released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto the said Sir George Carteret, his heirs and assigns for ever, all that tract of land adjacent to New England, and lying and being to the westward of Long Island and Manhitas Island, and bounded on the est part by the main sea, and part by Hudson's river, and extends southward as far as a certain creek called Barnegatt being about the middle, between Sandy Point and Cape May, and bounded on the west in a strait line from the said creek called Barnegat, to a certain creek in Delaware river, next adjoining to and below a certain creek in Delaware river called Renkokus Kill, and from thence up the said Delaware river to the northermost branch thereof, which is in forty one degrees and forty minutes of latitude; and on the north, crosseth over thence in a strait line to Hudson's river, in forty one degrees latitude."

EXHIBIT C 42.

Quintipartite Deed, July 1, 1676.

Leaming & Spicer, pages 61, 67.

This deed releases and conveys "unto Sir George Cartaret, his heirs and assigns, forever, all that easterly part, share and portion, and all those easterly parts, shares or portions of the said tract of

land and premises so granted and conveyed by his said royal
143 Highness the said James Duke of York, unto the said John Lord Berkeley and Sir George Cartaret, as aforesaid, extending eastward and northward along the sea coast and the said river called Hudson's river, from the east side of a certain place or harbour lying on the southern part of the same tract of land, and commonly called or known in a map of the said tract of land, by the name of Little Egg Harbour, to that part of the said river called Hudson's river, which is in forty-one degrees of latitude, being the furthermost part of the said tract of land and premises which is bounded by the said river, and crossing over from thence in a straight line, extending from that part of Hudson's river aforesaid to the northermost branch, or part of the before mentioned river called Delaware river, and to the most northerly point or boundary of the said tract of land and premises, so granted by his said Royal Highness James Duke of York, unto the said Lord Berkeley and Sir George Cartaret, now by the consent and agreement of the said parties to these presents, called and agreed to be called the north partition point, and from thence, that is to say, from the said northern partition point extending southward by a strait and direct line, drawn from the said north partition southward, thro' the said tract of land, unto the most southerly point of the east side of Little Egg Harbour aforesaid."

Exhibit C 43.

Lease from Elizabeth, Widow of Sir George Carteret, and His Trustees, to the First Twelve Proprietors of East Jersey.

N. J. Arch., Vol. 1, p. 366.

"This indenture made the first day of february in the four and Thirtieth yeare of the Raigne of our Soveraign Lord Charles the second by the Grace of God of England Scotland ffrance and Ireland King Defender of the faith &c. Annoq Domini 1681 Between the Right Honble. Dame Elizabeth Carteret the Relict and sole Executrix of the last Will and Testament of the Right Honoble. Sr. George Carteret Knight and Baront. Deceased," and others, "of the one part, and William Penn," and others, "of the other part,
144 Witnesseth," etc., that the said party of the first part "Have Granted Bargained and sould, and by these presents do Grant, Bargain and Sell to the said William Penn * * * * that whole and Entire Tract of Land in America heretofore called New Caesarea or New Jersey Extending Eastward and Northward along the sea Coasts and a Certain River called Hudsons River from the East side of a certain place or Harbour lying on the southerne part of the same Tract of Land (and com'only called or Known in a Mapp of the said Tract of land) by the name of Little Egg Harbour to that part of the said River called Hudson's River, which is in forty one Degrees of Latitude, being the furthermost part of the said Tract of Land and premises, which is bounded by the said River

and Crossing over from thence in a Straight line Extending from that part of Hudsons River aforesaid to the Northermost Branch of a certain River there called Delaware River and to the most Northerly poynt or Boundary of the said Entire Tract of Land and premises now called the north partic'on point, and from the said north partic'on point Extending Southward unto the most Southerly point by a Straight and direct Line drawn through the said Tract of Land from the said north partic'on point unto the said South partic'on point called the Line of partic'on, Dividing the said Easternly part, share and porc'on from the Westernly part share and porc'on of said Tract of Land. * * * * * * In witness whereof the said parties to these presents have to these present Indentures interchangeably Sett their hands and Seales. Dated the day and years first above written.

ELIZ CARTERET," AND OTHERS.

EXHIBIT C 44.

Release from Duke of York to the Twenty-four Proprietors, March 14th, 1682-3.

Leaming & Spicer, Page 141.

"This indenture made the fourteenth day of March, in the five and thirtieth year of the reign of our Sovereign Lord Charles the Second, by the Grace of God of England, Scotland, France and Ireland, King, Defender of the Faith, &c. Anno Domini 1682 Between
145 his Royal Highness the most illustrious Prince James, Duke of York and Albany, Earl of Ulster, &c., only brother to our Sovereign Lord the King, of the one part, and the Right Honourable James Earl of Perth, of the kingdom of Scotland," and others, "of the other part. Whereas our said Sovereign Lord the King's Majesty, in and by his Letters Patent, under the great seal of England, bearing date the 12th day of March, in the sixteenth year of his said Majesty's reign, did amongst several other things therein mentioned, give and grant unto his Royal Highness James Duke of York, his heirs and assigns, all that tract of land adjacent to New England, in the parts of America, and lying and being to the westward of Long Island and Manhattan Island, and bounded on the east part by the main sea; and east by Hudson's river; and hath on the west, Delaware bay or river; and extendeth southward to the main ocean as far as Cape May, at the mouth of Delaware bay; and to the northward as far as the northermost branch of the said branch of the said bay or river of Delaware, which is in one and forty degrees and forty minutes of lattitude, and crossing over thence in a streight line to Hudson's river, in one and forty degrees of lattitude; which said tract of land was then after to be called by the name of New Cesarea or New Jersey * * * and whereas his said Royal Highness James, Duke of York, did heretofore by several good and sufficient conveyances and assurances under his hand and seal duly executed, the twenty-third and twenty-fourth days of June, in the sixteenth

year of his said Majesty's reign, for the consideration therein mentioned, grant and convey the said tract of land and premises before mentioned, to John Lord Berkeley, baron of Stratton, and one of his Majesty's most honorable Privy Council, and Sir George Carteret, of Salterem, in the county of Devon, knight and Baronet, and one other of his Majesty's most honourable Privie Council, and their heirs, the said tract of land and premises before particularly mentioned, and the reversion and reversions, remainder and remainders of the same, to hold unto the said John Lord Berkeley and Sir George Carteret, their heirs and assigns forever, under the yearly rent of twenty nobles sterling, payable as the same is therein reserved to be paid. And whereas his said Majesty did by other his Letters Patents, dated the twenty ninth day of June in the six and twentieth year of his said Majesty's reign, grant and convey unto his said Royal Highness, and his heirs, forever, as well the said tract of land and premisses herein before reciteed to have been
146 granted and conveyed by his said Royal Highness, unto the said John Lord Berkeley and Sir George Carteret as aforesaid, as all other the lands and hereditaments in and by the said herein first before recited Letters Pattents granted, or mentioned to be granted. And whereas his said Royal Highness by his indenture of lease and release, bearing date the — of July, in the six and twentieth year of his Majesty's reign, did grant and convey the said tract of land and premisses, to the said Sir George Carteret, his heirs and assigns, as by the said indenture relation being thereunto had, may appear. And whereas upon a partition made of the whole and entire premisses, between the said Sir George Carteret, and William Penn of Worminghurst, in the county of Sussex, Esq.: Gawn Lawry, of London, merchant; Nicholas Lucas, of Hertford, in the county of Hertford, malster; and Edward Bullynge, of Westminster, in the county of Middlesex, gentleman; in whom the fee simple of the said Lord Berkeley's, undivided moyety, of all and singular the premises, by good and sufficient conveyances, was then vested the said William Penn, Gawen Lawry, Nicholas Lucas, and Edward Bullynge, did bargain, sell, release and confirm unto the said Sir George Carteret, his heirs and assigns, all that easterly part, share and portion, and all those easterly parts, shares and portions of the said whole and entire tract of land and premises before mentioned, extending eastward and northward along the sea coasts, and the said river called Hudson's river, from the east side of a certain place or harbour, lying on the southerly part of the same tract of land, and commonly called or known in a map of the said tract of land, by the name of Little Egg Harbour, to that part of the said river called Hudson's river, which is in forty one degrees of lattitude, being the northern-most part of the said tract of land and premisses, which is bounded by the said river; and crossing over from thence in a straight line, extending from that part of Hudson's river aforesaid, to the northermost branch of the aforementioned river called Delaware river, and to the most northerly point or boundary of the said entire tract of land and premises, now called the north partition point and from thence, that is to say, from the north par-

tition point, extending southward, unto the more southerly point, by a straight and direct line drawn through the said tract of land, from the said north partition point unto the said south partition point, by the consent and agreement of the said parties, now called the line of partition, and by them intended for the dividing and making a partition of the easterly part, share and portion, from the westerly
147 part, share and portion of the said tract of land and premises * * * * * * Now these presents witness, that for and in consideration of a competent sum of lawful English money, unto his said Royal Highness in hand paid, and for the better extinguishing all such claims and demands as his Royal Highness, or his heirs, may any wise have of or in the premises aforesaid, now called East New Jersey, or any part of them, and for the further and better setting and conveying, assuring and confirming of the same, and of every part thereof, according to the purport and true meaning of these presents, his Royal Highness the said James Duke of York, hath granted, bargained, sold, released and confirmed, and by these presents, as far as in him lyeth, doth grant, bargain, sell, release and confirm unto the said James, Earl of Perth," and others, "their heirs and assigns, to improve and plant the said premisses with people, and to exercise all necessary government there, whereby the said premises may be the better improved, and made more useful to them, their heirs and assigns, and to the King's Majesty, his said Royal Highness hath likewise given and granted assigned and transferred, and doth by these presents give, grant, assign and transfer unto the said Earl of Perth," and others, "their heirs and assigns, proprietors of the said Province of East New Jersey aforesaid, for the time being, all and every such and the same powers, authorities, jurisdictions, governments, and other matters and things whatsoever, which by the said respective recited Letters Patents, or either of them, are or were granted, or intended to be granted, to be exercised by his said Royal Highness, his heirs, assigns, deputies, officers, or agents, in or upon, or in relation unto the said premisses, hereby confirmed, or intended to be hereby confirmed, and every of them, in case the same were now in the actual seisen of his Royal Highness, to be held, enjoyed, exercised and executed by them the said Earl of Perth," and others, "their heirs and assigns, Proprietors of the said Province of East New Jersey, for the time being, as fully and amply to all intents, constructions, and purposes, as his said Royal Highness, or his heirs, might, could or ought to hold, enjoy, use, exercise or execute the same by force and virtue of the said several and respective before recited Letters Patents, or either of them, or any thing in them, or either or any of them, contained or otherwise howsoever. Provided always, that these presents be entered with the Auditor General of his said Royal Highness within two months next after the date hereof. In wit-
148 ness whereof the parties above mentioned to these present indentures, interchangeably have set their hands and seals, the day and year first above written.

"JAMES."

Exhibit C 45.

Commission of Colonel Thomas Dongan to be Governor of New York.

Documents Relating to the Colonial History of the State of New York, Vol III, p. 328.

September 30, 1682.

(New York Entries, CLI, 39.)

"Whereas it has pleased ye Kings most Excellent Ma'tie my Soveraigne Lord & Brohtre by his letters Pattents to give and grant unto me and my heires and assignes All that part of ye Maine land of New England beginning at a certaine place called or knowne by the name of St. Croix next adjoyning to New Scotland in America and from thence extending along ye Sea Coast unto a certaine placed called Pemaquin or Pemaquid and soe up ye River thereof to ye furthest head of ye same as it tendeth Northward and extendeth thence to ye River Kinebequi and soe upwardes to ye shortest course to ye River Canada Northward. And also all yt Island or Islands comonly called by ye severall name or names of Matowacks or Long Island scituate, lyeing and being towards ye West of Cape Codd and ye Narrow Higansetts abutting upon the Maine land betweene ye two Rivers there called or knowne by ye severall names of Connectecut and Hudsons River, together alsoe wth ye said river called Hudsons River and all ye land from the West side of Connectecut river to ye East side of Delaware Bay. And also all yse severall Islands called or knowne by the name of Martyne Vyniards and Mantukes otherwise Mantukett,[1] together with all ye lands islands soyles rivers harbours mines minerals quarries woods marshes waters lakes fishings, hau (k) ing hunting and fowling, and all other royaltyes and profitts comoditves & hereditaments to ye said severall islands lands and premises belonging & apperteyneing with their and every of their appurtences. To hold the same by[2] my owne proper use and behoofe, wth power to correct punish pardon governe
149 and rule ye inhabitants thereof by my selfe or such Deputyes Commissionrs or Offers as I shall thinke fitt to appoint as by his Mats said Lettrs Pattents may more fully appeare. And whereas I have since for divers good causes and consideracons by severall instrumts under my hand and seale bargained sold released and confirmed unto Sir George Carterett (late Vice Chamberlaine to his Mats Household) and his heires, and unto Edward Billing and others and their heirs, all yt tract of land (prcell of ye prmisses) comonly called or knoyne by the names of East and West New Jer-

[1] "Nantukes otherwise Nantuckett." Official copy in Book of Commissions, I. 59.—Ed.

[2] "To my owne." Official Copy.—Ed.

sey, scituate on the West side of Hudsons River according to certaine Boundaryes more particularly expressed in ye sd severall instrumts and undr certaine rents and covents as therein relacon being thereunto had may more fully appeare. And whereas I have conceived a good opinion of the integrity prudence ability and fitness of Coll. Thomas Dongan to be employed as my Lieutent there, I have therefore thought fitt to constitute and appoint him ye said Coll: Thos[a] to be my Lt and Govr within ye lands islands and places aforesaid (except the said East and West New Jersey) to performe & execute all and every the powers wch are by the said lettrs pattents granted unto me to be executed by me my Deputy Agent or Assignes to have and to hold ye said place of Lieutenant & Govr unto him the said Coll: Thomas Dongan but dureing my will and pleasure only; Hereby willing and requiring al and every the Inhabitants of the said lands Islands and places (except as before excepted) to give obedience unto him the said Coll: Thomas Dongan in all things, according to the tenour of his Mats Letters Pattents. And ye said Coll: Tho Dongan to observe follow and execute such Ordrs and direccons as he shall from time to time receive from my selfe. Given undr my hand and seale at St. James's the 30th day of September, 1682."

EXHIBIT C 46.

An Act to Divide the Province into Four Counties, 1682.

Leaming & Spicer, Page 229.

"Having taken into consideration the necessity of dividing the Province into respective counties, for the better governing and settling courts in the same, Be it enacted by this General Assembly, and the authority thereof, that this Province be divided into four counties as followeth. Bergen county to contain all the settlements between Hudsons river and Hackinsack river, beginning at Constables Hook, and so to extend to the uppermost bound of the Province northward between the said rivers."

EXHIBIT C 47.

Letter from Duke of York to Governor Dongan.

N. J. Arch., Vol. 1, p. 475.

"Coll. Dongan

My Comrs. are makeing wt. dispatch they can wth. those Bills that you have sent hither and particularly wth. yt. wch. conteynes the Franchises and Priviledges to ye Colony of New Yorke, wherein if any alterac'ons are made (either in ye forme or matter of it) they

[a] "Coll. Thomas Dongan." Ibid.—Ed.

will be such as shall be equally or more advantagious to the people there, and bettr. adjusted to ye laws of England. In the mean time because of some rumours I have mett with, as if some of yor, neighbors undr. colour of grants from my selfe or upon some other groundless pretences endeavour all they can to obstruct ye trade of New Yorke and Albany; I thinke it fitt hereby to recommend that to you in an especeall manner that you may not suffer any innovac'on within that river, nor any goods to passe up it but what shall have paid the dutyes at New Yorke; we to p'serve the chiefe benefitts of yt trade to the inhabitants and traders of New Yorke and Albany wch is agreeable to ye Laws of yor Colony and the practice of yor p'decesrs. and necessary for the collecting those Customes and other dutyes wch must helpe to support yor government. And if you find that ye inhabitants of Eeast Jersey have any other way of trading wth the Indians then by the River of N. Yorke that you will use your endeavors to prevent it, and give me advise thereof wth yor opinion wt is proper for me to doe in it; my desire being to preserve the Indian Trade as entire as I can for the benefit of the Inhabits. and traders of New Yorke preferably to all others.

Windsor 26th Augst (1684)

I am &c.

——— ———.

To Coll. Dongan &c."

151 EXHIBIT C 48.

"An Act to Divide the Province and Dependencies into Shires and Counties, Pass'd the 1st of October, 1691.

"Forasmuch as Mistakes may arise about the Limits and Bounds of the respective Counties within this Province: For prevention whereof,

"I. Be it enacted by the Commander in Chief and Council and Representatives and by the Authority of the same, That the said Province be divided into Twelve Counties as followeth:

"II. The City and County of New York, to contain all the Islands commonly called Manhattan's Island, Manning's Island, the two Barn Islands, and the three Oyster Islands; Manhattan's Island to be called the City of New York, and the Rest of the Islands, the County.

* * * * * * *

"VIII. The County of Richmond to contain all Staten-Island, Shooter's-Island, and the Islands of Meadow on the West Side thereof."

Bradford's Laws of N. Y., pp. 39.

EXHIBIT C 49.

An Act for Dividing Each County into Township-, 1693.

Leaming & Spicer, Page 329.

"Whereas by act of General Assembly in the month of March 1682, this province was divided into counties for the better governing and settling courts in the same, but whereas several things is to be done by the inhabitants of towns, hamlets, tribes or divisions within each county, as chusing of deputies, constables, &c., taxing and collecting of several rates for publick uses, and the making orders amongst themselves respectively about swine, fences, &c. and whereas a great many settlements are not reckoned within any such town or division, nor the bounds of the reputed town ascertain'd, by mean whereof the respective constables knows not their districts, and many other inconveniences arising from thence, and forasmuch as by the act made in Sept. 1692, for dividing the several counties into
152 townships, the time for the returns of the said divisions being too short, and the method of dividing by county meetings, inconvenient. Be it therefore enacted by the Governor, Council and Deputies now met and assembled in General Assembly, and by the aut-ority of the same, that the several counties of this Province, shall be divided as followeth, viz. In the county of Bergen, the township of Hacksack, shall include all the land betwixt Hackinsack river, and Hudsons river, that extends from the corporation town bounds of Bergen to the partition line of the Province. The corporation town of Bergen, being bounded according to their charter."

EXHIBIT C 50.

Surrender by the Proprietors of the government of East and West New Jersey, April 15th, 1702. Acceptance of the same, April 17th, 1702. Leam. & S., pp. 609 and 617.

EXHIBIT C 51.

"An Act for Dividing and Ascertaining the Boundaries of all the Counties in this Province, Passed January 21, 1709-10.

1. "That in the eastern division, the county of Bergen shall begin at Constable's hook, and so run up along the bay and Hudson's river to the partition point between New Jersey and the province of New York; and so run along the partition line between the provinces, and the division line of the eastern and western division of this province, to Pequaneck river; and so run down the said Pequaneck and Passaick river to the sound; and so to follow the sound to Constable's Hook, where it began.

"2. That the county of Essex shall begin at the mouth of Rahway river, where it falls into the sound, and so run up the said Rahway river to Robeson's branch; thence west to the division line, between the eastern and western division aforesaid, and so to follow the said division line to Pequaneck river, where it meets Passaick river; thence down Passaick river to the bay and sound; thence down the sound to where it began." Rev. of N. J., 1877, p. 198.

153 EXHIBIT C 52.

Charter for Township of Bergen, January 13, 1713-14.

"Patent for Bergen Townsh.

Anne by ye Grace of God of Great Britain and Ireland Queen Defender of ye Faith &c. To all to whom these presents shall Come or may in any wise concern Greeting whereas our Loveing Subjects Andreas Van Buskirk Barnett Christian Enoch Freeland Rutt Van Horne Hendrick Culper Wonder Devericks & John Devericks Freeholders inhabitants of ye town of Bergen in ye County of Bergen In our Province of New Jersey on behalfe of themselves & ye rest of ye Freeholders of ye sd town by their Humble Petition to our trusty & well Beloved Robert Hunter Esqr our Capt Generall & Governour in cheife of our Province of New Jersey have set forth that their Ancestors & Predicessors Freeholders of ye sd town have possessed held & Enjoyed Divers Lands tenemts & Hereditamts & Used & exercised Divers Privilidges & immunities by virtue of a Grant Charter or Patent sealed with ye seale of ye Province of New Jersey & Signed by Phillip Carterett Esqur Late Governour of this Province and his Councill under ye Right Honorable John Lord Berkley Barron of Straton & Sr George Carterett Knight & Baronett then Absolute Lords Proprietors of ye sd province beareing date ye twenty second Day of Sept. Anno Dom. one thousand six hundred sixty & eight wch sd Lands were butted and bounded as Followeth Vizt. Beginning at ye No end of ye sd town from a place called Mordains Meadow lying upon ye wt side of Hudsons river from thence to runn upon a No Wt Line by a three raile fence that is now standing to a Place called Espatin & from thence Runs to a Little Creek surrounding No No Wt till it comes into hackinsack river containing in breadth from ye top of ye Hill one mile and a halfe or one hundred & twenty chain from thence it runs along ye sd hackinsock river upon a So So Wt Line till it comes to ye point or neck of Land that is over agt staten Island & shooters Island in Arthur Gull bay containing in Length above twelve miles from thence Running Eastward along ye river called Kill Van Kull that parts Staten Island & ye main to a point or neck of Land called Constables Hooke & from thence to run up Noward all along ye Bay up into Hudsons river till it comes to Mordaines Meadow aforesd so that ye whole tract of up Land & Meadow prop-

erly belonging to ye sd town of Bergen is bounded on ye No
154 end by a tract of Land wch Did belong to Capt. Nicholas Varlett & Mr Samuel Eadsall on ye Et side by Hudsons river on ye So End by ye Kill Van Cull that parts Staten Island & ye main and on ye Wt side by Arthur Cull Bay and Hackinsack river ye whole containing Eleven thousand five hundred and twenty acres English measure & whereas Divers of ye sd Lands remain in Comon & undivided for ye General Good & Benefitt of ye Freeholders & Inhabitants of sd town on wch sd Lands ye Neighbouring townes & Settled Do comitt Great wast & spoile in Culling Down & carrying away Great Quantities of their timber who cannot be releived In ye premises in ye ordinary course of Law or Equity through some Defects in ye Grant of Incorporation aforesd wch to Prevent for ye Future they have prayed our Charter or Pattent of Incorporation wch request we being willing to grant Know ye that of our Especiall Grace certain Knowledge & mere motion we have given Granted ratified & confirmed And Do by these prsents for us our heirs & Successors forever Give Grant ratifie & confirme unto Andreas Van Buskirk Barnett Christian Enock Freeland Rutt Van Horne Henry Culper Wender Devericks John Devericks in trust to & for themselves & ye rest of ye Freeholders Inhabitants of ye sd town & their Successors forever within ye Limits & bounds aforesd ye Free Liberty & Privilidge of being a township & they & their successors forever hereafter are & shall be by virtue Hereof a community or township or body Corporate or Politick in Deed & in name by ye name of ye trustees of the Freeholders inhabitants of ye township of Bergen & that they and their Successors forever hereafter shall & may Have a perpetuall Succession of ye number of seven of ye principall freeholders & inhabitants of ye sd township of Bergen Who shall be ye trustees of ye Freeholders inhabitants of ye township of Bergen that is to say that upon ye Death or Other Avoidance of any One or more of ye sd trustees it shall & may be Lawfull for ye Freeholders of ye sd township For ye time being *being* thereunto Summoned or Warned by ye Constable or Constables of ye sd town for ye time being by Order of ye Surviving trustees of ye sd township of Bergen or ye Major part of them to Assemble & meet together at such time & place within ye sd township as ye sd Surviveing trustees for ye time being or Ye Major part of them from Time to time as need shall be shall think fitt to Nominate & Appoint & there by Majority of Votes of ye sd Freeholders to elect & chuse so many of ye Principall Freeholders of ye sd township resideing within ye bounds of ye sd township as may make ye number of ye sd trustees to be seaven
155 wch trustees so chosen & Elected as aforesd Together wth ye surviveing trustees for ye time being shall be trustees of ye sd township to all intents & purposes as Much as if they had been particularly nominated & expressed in this our sd Grant & we do further Give & Grant Unto ye sd trustees of ye Freeholders inhabitants of ye town of Bergen & their Successors forever that it shall & may Be Lawfull to & for ye sd trustees & their Successors forever by ye name of ye trustees of ye Freeholders Inhabitants of ye Township of Bergen in any of our Courts within our sd Province of New Jersey to

sue & be sued answer & be answered unto implead & be Impleaded Defend & be Defended and we do further Give and Grant unto ye sd trustees of ye Freeholders Inhabitants of ye township of Bergen & their Successors for ever Hereafter full Power & Lawfull Authority as often as there shall be occasion at their discresion or ye Discresion of the Major part of them to Summons & call together ye Freeholders of ye sd township & for ye sd Freeholders & their Successors so sumoned and called together to Assemble & meet together at such certain Days & at such Place as ye sd trustees for ye time being or the Major part of them shall appoint to make and Enter in a Book for that purpose to be kept all such prudentiall rules and orders for ye Improvement preservation & Defence of their sd Comons as they or ye Major part of them shall agree Upon as also to Appoint a Clerk & Register for ye Doing thereof & to contribute & Levy among themselves such common sums as are Absolutely necessary for ye Doing thereof from time to time as need shall be & not otherwise & further We do for us our heirs & Successors Give & Grant unto ye sd trustees of ye Freeholders Inhabitants of ye township of Bergen & their Successors forever that they & their Successors by ye name aforesd be forever hereafter one body Corporate & Politick able and Capable in ye Law to Purchase have take & receive & enjoy to them & their Successors forever ye Use of ye Freeholders Inhabitants of ye township of Bergen Lands Tenemts Messuages Rents Privilidges & other Hereditamts whatsoever of whatsoever Nature kind & Quality they be in fee & perpetuity as also to Give Grant Bargain sell Lett Lett & Dispose of any of the lands Belonging or appurtaining to ye sd Comunity & as yet unappropriated either for one two or three lives for term of years or in fee & also that ye sd Corporation shall & may forever hereafter have & Use a Comon seale for ye Business of them & their Successors for ye Businesses of them & their Successors wth full power to alter Break & now make ye same at their Dis-
156 cression & we do further Give and Grant to ye sd trustees of ye Freeholders Inhabitants of ye township of Bergen and their Successors forever that it shall and may be Lawful for ye Freeholders Inhabitants of ye sd town Annually & once in Every Year to Assemble & meet together on ye first Tuesday in May Annually to Choose two Constables one overseer of ye poor and two Overseers of ye Highways by ye Majority of ye votes of ye sd freeholders inhabitants of ye sd town of Bergen wch Constables & Overseer's so Chosen as aforesd shall serve in their Respective Offices in ye sd town Until ye next Annuall Election If they So Long shall Live or pay ye sum of two pounds each Person refuseing to serve for ye Use of the poor of ye sd town & That in Case of ye Death or Refusall of any of ye sd Officers as often as ye same shall happen out of ye Usuall aniversary time of Election that shall & may be Lawfull for ye Freeholders Inhabitants at any other time & place to Assemble & Meet together to Chuse others in their Room & place & that it shall & may be Lawfull for any Justice of ye Peace wthin The sd township to administer an Oath to ye sd Officers of ye sd town for ye true & Faithful Discharge of their Respective Offices to have hold & Enjoy all & Singular ye sd privilidges Rights Liberties & imunities aforesd to

ye sd Andreas Van Buskirk Barnet Christian Enoch Freeland Rutt Van Hoorne Hendrick Culper Wonder Devericks John Devericks Freeholders Inhabitants of ye township of Bergen & their Successors forever Yielding Rendring & paying unto us our heirs & Successors or to our or their Collector & Receiveor Generall of our sd province for ye time being yearly every Year on ye feast Day of ye Anuntiation of ye blessed Virgin Mary as an acknowledmt for ye sd privilidge ye Annuall rent of Five shillings in Liew & Stead of all other Rents Services Dues Duties & Demands whatsoever for ye same in Testimony whereof we have Caused these our Letters to be made Pattent & ye seale of our Province of New Jersey to be Affixed & ye same to be Entred of Record in our Secretarys Office of our sd province Witness our trusty & welbeloved Robert Hunter Esqr our Capt Generall & Governor in Cheife in & over our Provinces of New Jersey New York & All ye territories & tracts of Land Depending thereon in America & Vice Admirall of ye same &c. at Burlington This Fourteenth Day of January in ye twelfth year of our Reigne &c.

BASS, *Secretary.*"

Recorded in Liber AAA of Commissions, in the office of N. J. Secty. of State, pages 154-155.

157 EXHIBIT C 53.

"His Majesties Grant to the Principal Inhabitants of the Town of Perth Amboy in the Province of New Jersey for Erecting the said Inhabitants Into a Body Corporate and Politique by the Name of the Mayor Recorder Aldermen and Commonality of the City of Perth Amboy."

"George by the Grace of God King of Great Britain France & Ireland Deffender of the Faith &c: To all Persons to whom these presents shall come Greeting, Whereas our loving subjects, John Johnston, Thomas Gordon, John Hamilton, George Willoks, John Barclay, William Eier, John Stevens, William Hodgson, William Frost, Henry Berry, John Sharp, Thomas Turnbull, Andrew Bedford and Alexander Walker and many other Inhabitants in our town of Perth Amboy in our Province of Nova-Cesarea or New Jersey by their Humble Petition Presented unto our Trusty & well beloved Robert Hunter Esqr. our Captain General and Governour in chief of our said Province of New Jersey, New York and Tracts of land depending thereon in America and Vice Admiral of the same &c., on behalf of themselves and others the Freeholders & Inhabitants of the said town have set forth that the said Town of Perth Amboy is not only the best Situation for a place of trade in our said Province of New Jersey and has a harbour for Shipping prefferable to those in the Province adjoyning, but that it is also the only Port appointed for the Collecting of our Customs in the Eastern Division of our Said Province of New Jersey, that the Said Town hath many years Languished under dessigned & unjust Impositions to prevent

its Growth to the Loss and Detriment of the Province until the Government happily Fell under the Care of our said Governor's Just Administration. The Petitioners with a due sence of Gratitude thankfully Acknowledging its New Life & Present Prospect of becoming a place is to be wholly Attributed to our said Governor's Expensive Encouragement & favorable Containance, As Also the Repeated Instances of his benignity during the Course of his Mild Administration is what gives the Petitioners hope their present supplication may prove successful tho their Request is not to be Granted of Right but Grace, Therefore Humbly prays for our Royal Grant by Letters Pattent under our Great Seale of our said Province of New Jersey to Incorporate the Freeholders Inhabitants of the said Town of Perth Amboy into a Body Corporate & Politique with Perpetual Succession by what Name our said Governor shall think fit, As
158 Also to Grant such Imunities and Privilledges as may be thought requisite for the Well Ordering & Ruling thereof &c. We being willing to Promote Trade, Industry, Rule and good Order amongst all our Loving Subjects in Granting their reasonable Request in that behalf, Therefore, Know ye that we of our special Grace Certain Knowledge & meer motion Have Given Granted Constituted Appointed Ratified and Confirmed and do by these presents Give Grant Constitute Appoint Ratify & Confirm unto the said John Johnston, Thomas Gordon, John Hamilton, George Willoks, John Barclay, William Eier, John Stevens, William Hodgson, William Frost, Henry Berry, John Sharp, Thomas Turnbull, Andrew Bedford & Alexander Walker and the rest of the Freeholders and Inhabitants of said Perth Amboy to them and their successors for ever within the Limitts boundaries & Precincts thereof after mentioned to Witt all that Tract of Land beginning upon the North Side of the Rariton River by the upper corner of that called Peter Sonman's Land and by the Lower Corner of that now in the Possession of James Moore of Woodbridge, thence extending on a straight line as said Moore's Land goes to Land now Possessed by one John Veal, thence continuing along by the said Veal's land to the North East corner thereof, from thence extending upon a Direct Line to the South West corner of David Herriot's Land and so extending along by said Herriot's to the South East corner thereof, from thence extending on a straight line to the South Westerly corner of the Land lately in the Tenure and occupation of John Carhart formerly one Henry Lessenbies and so along the line thereof Sasterly as it goes to the Meadow or Marsh, on the north side of a Gully where Water Generally runs, thence extending on a direct East Line through the Marsh and Sound to Low Water mark on the East side thereof from thence running down the Sound Southerly as far as the Southermost point of Staten Island from thence on a direct line to where George Willoks Plantation called Rudyard adjoynes by a Creek to that Plantation of Late Belonging to Andrew Browne Deceased, thence extending along the lines of said Brownes Land (excluding the same) to Matewan Creek, thence up the Creek to a Bridge thereon, where the highway from Amboy Ferry to Freehold & Middletown Crosseth the same, thence extending along the Partition line

betwixt the Counties of Middlesex & Monmouth to Milston Brook, thence down the said Brook to the Post Road, thence along the same to South River as it goes to Rariton River and so down Rariton
159 River (Including the said Rivers) to High Water Mark on the North Side thereof to where the Limitts of said Town is said to begin to be from henceforth Called Known & Distinguished by the name of the City of Perth Amboy."

May 22, 1718, recorded in surveyor general's office Eastern Division of N. J., Book C2, p. 1.

EXHIBIT C 54.

Letter from Lewis Morris, President of the Council of New Jersey, to the Lords of Trade, N. J., Arch., Vol. 4, p. 439.

"PERTH AMBOY, November 21: 1719.

My Lords.

* * * * * * *

I have receiv'd two letters, one from your Lordships on the 7th. of August last, and anothre from Mr. Secretary Popple of the 26th of the Same month; in the first your Lordships desire to know the Limits and boundaries, of the Province of New Jersie, which are as follows:

It begin on Hudsons River, in the latitude of fourty one degrees, and runs from thence, in a direct line to the latitude of fourty one degrees And fourty minutes on the northermost branch of the River Delaware, then it runs downe, following the course of the river Delaware to Cape May: wch. is the northermost point, on the mouth, or Entrance into that river, which there, and for many leagues up, looses the name of Delaware river and is calld Delaware bay from Cap May it Extends Northward, along the sea to Sandy Hook; and from the Northward, along the sea to Sandy Hook; and from the Northward of A great bay called Sandy hooke bay (into which the rivers of Hudson, Raritan, Hackinsack and Pisaick, empty themselves) it Extends along the river of Hudson, to the latitude of fourty one first mentioned.

It is bounded on the South East, by the Sea and on ye East, partly by the Sea, and partly by Hudsons River, which divides it from part of the Province of New Yorke, on the North East by the Province of New Yorke; A direct line from the latitude of fourty one degrees, on hudsons river, to the latitude of fourty one degrees, and fourty minutes on the Delaware being the line of Partition between them.

It is bounded on the South, Southwest, and west, by the bay
160 and river of Delaware, which divides, it from the Province of Pensilvania.

The best Voucher I know of, for these boundaries, is A grant from the late King James when Duke of Yorke, to my Lord Barclay and Sir George Carteret; which I think is Enrolled in Chancery; if not; the Jersie Societie, can (I suppose) furnish your Lordships with it,

or, if your Lordships thinke it necessary, I can get it taken out of the records here, and transmit it to you.

* * * * * * *

My Lords, Your Lordships Most Obedient and Most Humble Servant,

LEWIS MORRIS.

Right Honble, ye Lords of Trade and Plantations."

EXHIBIT C 55.

Extracts from the Montgomerie Charter of the City of New York, Granted in 1730, Found in New York City Consolidation Act, Annotated, 1891, by Mark Ash, Page 892, &c.

"2. And we do further, of our special grace, certain knowledge and mere motion, for us, our heirs and successors, give, grant order and appoint that the said city of New York, and the compass, precincts, circuit, bounds, liberties and jurisdictions of the same, do reach, extend and stretch forth, and shall and may reach, extend and stretch forth, as well in length as in breadth and circuit, in and through the limits and boundaries following, to wit: To begin at the river, creek or run of water called Spytden Duyvel, over which King's bridge is built, where the said river or creek empties itself into the North river, on Westchester side thereof, at low-water mark, and so to run along the said river, creek or run, on Westchester side, at low-water mark, unto the East river or sound, and from thence to cross over to Nassau Island, to low-water mark there, including Great Barn Island, Little Barn Island and Manning's Island, and from thence all along Nassau Island shore, at low-water mark, unto the south side of the Red Hook; and from thence to run a line across the North river so as to include Nutten Island, Bedlow's Island, Bucking Island and the Oyster Island, to low-water mark
on the west side of the North river, or so far as the limits
161 of our said province extends there, and so to run up along the
west side of the said river at low-water mark, or along the limits of our said province, until it comes directly opposite to first mentioned river or creek, and thence to the place where the said boundaries first began. And also, that the said city, within the limits and jurisdiction thereof as aforesaid, be and forever hereafter shall be and remain divided into seven wards, to wit: The West ward, the South ward, the Dock ward, the East ward, the North ward, Montgomerie ward and the Out ward; each and every of which wards shall contain and comprehend, and reach and extend through the several limits and bounds following, to wit:

The West ward to begin at the middle of the east end of the street that goes from the parade to the North river, between the lot of ground, now in fence, belonging to Charles Sleigh, and the house and ground late of Thomas Elde; and from thence to run a direct line over the middle of the west end of Beaver street, and so along

the middle of Beaver street till it comes directly opposite to the middle of the south end of New street, and then to run along the middle of New street to the north end thereof; and from thence to run to the rear of the dwelling house now in the possession of Domine DuBois; and from thence to run all along the rear of the houses that front the Boardway up to the north part of the rear of Spring Garden house; and from thence to run up a line as the Boardway runs to the end thereof, including the said Broadway; and John Harris, his house, and to include all other houses hereafter to be built fronting the said Broadway, and from the north end of the Broadway to continue and run a line as the said street runs until it comes directly opposite to Bestaver's Killitie or rivulet, and from thence to run to the said Bestaver's Killitie, and so to continue the said line four hundred foot beyond low-water mark into the North river, and so down the said North river, always keeping four hundred foot beyond low-water mark, until it comes directly opposite to the middle of the west end of the first-mentioned street, and so to run to and through the middle of the said street, to the place where the said West ward first began.

The South Ward to begin at the middle of Wall street, where the line of the West Ward runs across the same, and from thence down the middle of Wall street, until it comes directly opposite to the middle of the north end of Broad street; and from thence down the middle of Broad street to the long bridge, and from thence to the eastward of and to include the said long bridge, and the market
162 house at the south end of the said street; and from thence to continue to run a south-east line across the East river to low water mark, on Nassau Island shore; and from thence to run along the said shore at low-water mark to the south side of Red Hook, and from thence to run a line across the North river so as to include Nutten Island, Bedlow's Island, Bucking Island and the Oyster Island, to low-water mark on the west side of the North river; and so to run up along the west side of the said river at low-water mark, until it comes directly opposite to Bestaver's Killitie or rivulet; and from thence to run to the north-westerly corner of the West Ward, at four hundred foot below low-water mark; and from thence along the bounds of the said West ward till it comes to the south-westerly end thereof; and from thence still along the bounds of the West Ward, through the street by the parade, and through Beaver street, and New street, to the place where the south ward began.

* * * * * * *

The out ward to begin at the north-westerly corner of the South ward, at low water mark, on the west side of the North River, over against Bestaver's Killitie or rivulet, and from thence to run up along the west side of the said river at low-water mark until it comes directly opposite to the river, creek or run of water, called Spytden Duyvel, over which King's Bridge is built, and from thence to run to the said creek or river to the Westchester side thereof, at low-water mark, and so to run along the said river, creek or run on Westchester side, at low water mark into the East river or sound, and from thence to cross over to Nassau Island to low-water mark there, including

Great Barn Island, Little Barn Island and Manning's Island; and from thence along Nassau Island shore, at low-water mark, to the bounds of the South ward; and from thence along the bounds of the South ward, the Dock ward, the East ward and Montgomerie ward, to the place where the said Montgomerie ward and the North ward meet, at the rivulet that runs from fresh water, and so to run a north course as the said North ward runs, till it comes to the bounds of the West ward; and from thence along the bounds of the West Ward to the north-westerly corner thereof, at four hundred foot beyond low-water mark, near Bestaver's Killitie or rivulet, and from thence along the bounds of the South ward to the place where the said Out ward began."

* * * * * * *

"15. And we do hereby, for us, our heirs, and successors, ordain, declare, give, and grant, unto the said Mayor, Aldermen,
163 and Commonalty, and their successors, that the Common Council of the said city shall be summoned, called, and held, from time to time, so often, and at such times and places, as the Mayor, or in case of his sickness or absence, the Recorder of the said city, for the time being, shall think fit to appoint or direct; and that it shall and may be lawful to and for the said Common Council of the said city, or the major part of them, to assess and lay such reasonable fines and amerciaments in and upon every officer and member of the body corporate aforesaid, for the time being, who after having had due notice, or being duly summoned to appear or attend at any such Common Council, to be held for the said city, shall neglect so to do, or make default therein, or shall not appear or attend according to such notice or summons, in that behalf, or show a reasonable cause, by the said Common Council, or the major part of them, at their discretion to be allowed, and so as often as such case shall happen, so that no such fine or amerciament for any one default of appearance or attendance of any such officer or member of the body corporate aforesaid, shall exceed the sum of twenty shillings, in the manner and form aforesaid, to be levied, and by, to, and for the use of the Mayor, Aldermen, and Commonalty, of the said city, and their successors, to be recovered and received without any account thereof to be given to us, our heirs, or successors, or any of our or their officers and ministers. And we do further, for us, our heirs, and successors, give grant, and confirm, unto the Mayor, Aldermen, and Commonalty, of the said city of New York, and their successors forever, that the Common Council of the said city, for the time being, or the major part of them (but no other person or persons whomsoever, without the consent, grant, or license, of the said Common Council of the said city, for the time being, or the major part of them), from time to time, and at all times hereafter, shall and may have the sole, full and whole, power and authority of settling, appointing, establishing, ordering, and directing, and shall and may settle, appoint, establish, order, and direct, such and so many ferries, round Manhattan's Island, alias New York Island, for the carrying and transporting people, horses, cattle, goods, and chattels, from the said Island of Manhattan's to Nassau Island, and from thence

back to Manhattan's and, also, from the said Island Manhattan's to any of the opposite shores all round the same Island, in such and so many places as the said Common Council, or the major part of them, shall think fit, who have hereby, likewise, full power to let, set,
164 or otherwise dispose of, all or any of such ferries, to any person or persons whomsoever; and the rents, issues, profits, ferriages, fees, and other advantages arising and accruing from all and every such ferries; we do hereby fully and freely for us, our heirs, and successors, give and grant unto the Mayor, Aldermen, and Commonalty, of the city of New York aforesaid, and to their successors forever, to have, take, hold, and enjoy the same, to their own use, without being accountable to us, our heirs, or successors, for the same or any part thereof."

* * * * * * *

"24. And we do further, for us, our heirs, and successors, will, ordain, and grant, that the Mayor of the said city, for the time being, shall forever hereafter, be clerk of the market, of us, our heirs, and successors, within the city aforesaid, and the limits, liberties, and precincts, thereof; and that the Mayor of the said city, for the time being, by himself or his deputy, may and shall have full power and authority to do and execute, and shall and may do and execute forever, within the limits, liberties, and precincts of said city, all and whatsoever to the office of the clerk of the market there doth, shall, or may belong without any hindrance or impediment of us, our heirs, or successors, or any the officers of us, our heirs, or successors; and that no other clerk of the market shall intermeddle there. And also, that the Mayor of the said city, for the time being, and his successors, during the time of his or their mayoralties, and no other, be and shall be, the bailiff and conservator of the water of the North and East rivers, and shall and may do, exercise, and execute, the said office of bailiff and conservator of the water of the north and east rivers, or water bailiff, by him or themselves, or by his or their sufficient deputy or deputies, in, upon, or about the same water of the North and East Rivers (that is to say) in and through all the limits, bounds, and jurisdiction of the said city of New York, upon all and every the banks, shores, and wharves, of the same water of the north and east rivers, within the limits and bounds aforesaid; and to have, receive, collect, and enjoy, all and singular, wages, rewards, fees, and profits, to the same offices of clerk of the market, and water bailiff, or any of them, due or to be due, or belonging to his and their own use, without any account thereof, to us, our heirs, or successors, to be made. And also, that the Mayor of the said city, for the time being, shall have full power and authority to license or appoint, by warrant, under his hand and seal, or otherwise, one or more marshal or marshals of the said city, porters, carriers,
165 cartmen, carmen, packers, sullers, common criers, scavengers, and to displace all or any of them, and to put others in their rooms; and to add to, or diminish, the number of them, or any of them, when, and as often as the Mayor of the said city, for the time being, shall think fit."

Exhibit C 56.

'An Act for Confirming Unto the City of New York its Rights and Priviliges."

Passed the 14th of October, 1732.

"I. Be it declared and enacted by the Governor, the Council and the General Assembly of the Colony, of New York, and it is hereby enacted by the authority of the same, That the Mayor, Aldermen and Commonalty, of the city of New York, shall, and may, forever hereafter remain, continue, and be a body corporate and politic, in re facto et nomine by the name of the Mayor, Aldermen and Commonalty of the City of New York; and by that name to sue, plead, and be impleaded, and to answer, and to be answered, without any seizure or forejudger, for, or upon any, pretence of any forfeiture or misdemeanor at any time heretofore done, committed, or suffered.

"II. And be it enacted by the authority aforesaid, That all and singular letters patent, grants, charters and gifts, sealed under the great seal of the colony of New York, heretofore made and granted unto the Mayor, Aldermen and Commonalty, of the city of New York, be, and are hereby declared to be, and shall be good, valid, perfect, authentic, and effectual in the law, and shall stand, be taken, reputed, deemed, and adjudged, good, perfect, sure, available, authentic, and effectual in the law, against the King's Majesty, his heirs, and successors, and all and every person and persons, whomsoever, according to the tenor and effect of the said letters patent, grants, charters, and gifts.

"III. And be it enacted by the authority aforesaid, That all and singular letters patent, grants, charters and gifts, sealed under the great seal of the colony of New York, heretofore made and granted unto the Mayor, Aldermen and Commonalty of the City of New York, be, and are, to all intents and purposes, hereby ratified and confirmed.

"IV. And be it enacted by the authority aforesaid, That the Mayor, Aldermen and Commonalty of the city of New York,
166 and their successors, shall, and may forever hereafter, peaceably have, hold, use, and enjoy, all and every the rights, gifts, charters, grants, powers, liberties, privileges, franchises, customs, usages, constitutions, immunities, markets, duties, tolls, lands, tenements, estates and hereditaments, which have heretofore been given, or granted, unto the Mayor, Aldermen, and Commonalty of the city of New York, by any letters patent, grant, charter, or gift, sealed under the seal of the colony of New York.

"V. And be it enacted by the authority aforesaid, That this present act shall be accepted, taken, and reputed to be a general and public act of Assembly; of which all and every the judges, and justices of this colony, in all courts, and all other persons shall take notice on all occasions whatsoever, as if it were a public act of as-

sembly, relating to the whole colony; anything herein contained to the contrary thereof in any wise notwithstanding.'

Laws of N. Y., from 1691 to 1751 inc., p. 207.

EXHIBIT C 57.

Gov. Cosby to the Lords of Trade.

N. Y. Col. Docs., Vol. 5, p. 956.

"New York, 29 Aug. 1733.

My Lords:

I do myself the honor herewith to transmit to Your Lordspps the minnitts of the Council of this province to the 14th day of October last, and the Acts of Assembly past here the last session of Assembly markt from No. 1 to 23, and to save Your Lordspps the trouble of reading the titles of them I beg leave to refer to the numerical figures with which they are markt.

Nos 1, 4. 6, 7, 8, 13, 15, 20, 21, 22 being Acts which either revive or continue Acts formerly past which I presume have been considered by your Lordpps Board, need no remarks.

No. 2 is intended and necessary to preserve the breed of sheep.

No. 3 is an act wanted, and very useful.

Nos. 5, 11, 12, 14, 18, 19. The reason and necessity of these will appear in the preamble of the Acts.

167 No. 9. Several Acts of this kind have been formerly past and some many years ago expired and not again revived; the Wolves being entirely destroyed in some Countys, but in the Countys mentioned in this Act, the wolves still remaining, and it being thought most proper that the reward should be the same in every one of them this present Act was thought proper to be now made.

No. 16 is the Revenue Bill which needs no observation.

No. 17 is the Act for supporting Oswego, it is conformable in a great measure to the last Act made for that purpose, and in general makes the Trade of that place defray the expense, the only method whereby to maintain that place.

No. 23. Is an Act to naturalize some Foreigners; many Acts of this kind have been past in this province heretofore and I wish there were more frequent occasions for them, for this province wants only people to make it a flourishing Country.

No. 10. Is an Act for confirming the Charter granted to the City of New York by Govr. Montgomerie. My Lords, as to this Act I would beg leave to observe that the Charter which was designed to be confirmed by this Act having past away so many grants of a very extraordinary nature, that I thought it necessary for me to acquaint Your Lordpps with some of the inconveniencys arising from it. By this Charter are granted all the islands near and round his Majesties Garrison here, the soil of the East River, as far as low water mark and extending in length to the utmost of the island whereby his Majestys prerogative & interest may be in danger of suffering, and his ships

stationed here under a necessity of becoming petitioners to the Corporation for a convenient place to careen or refit; for this Charter having granted the Corporation all the islands as well near and round as before the Fort which lay commodious for the security and defence of it, in case of any eruptions, was as I conceive a lodging too great a power in them, in case of any necessity, and by so much a lessening of the King's prerogative.

I must own My Lords, that I was meerly surprised into an assent of this Act, it having been exhibited so very early after my arrival (as Your Lordpps will perceive by the Act itself) that I had not an opportunity of being acquainted with the nature and design of it and from the general words of the title of it, very little apprehended the nature of its extent.

The Act in General termes confirms the City all the grants to them at any time before made without either referring to any one grant in particular or mentioning what those grants were that were designed to be confirmed by this Act, so that Your Lordpps on view
168 of the Act could not determine what rights grants or particular privileges were to be confirmed by this Act and for ought appears some (if not many) of those girts of Charters might be (and as I believe are) prejudicial to his Majesties interest.

It was but very lately, My Lords, that I came to any knowledge of the Charter designed to be confirmed by this Act, and that Charter consisting of a vast number of Skins of Parchment and the vessel by whom I now write being to sail in a day or two has rendered it impracticable for me by this opportunity to have sent to Your Lordpps a copy of the Charter or of the substance of it, and without it Your Lordpps could not well Judge of the Act, the Act being worded in General terms, but shall send it by the next ship; and now hope that what I have offered will justify Your Lordpps to stop any proceedings at your Board upon that Act until I have the honour a second time of writing further to Your Lordpps concerning it.

I am My Lords, with the greatest respect imaginable Your Lordpps

Most obedient and humble servant,

W. COSBY."

EXHIBIT C 58.

Letter from Lords of Trade to Governor Cosby, N. Y. Col. Docs., Vol. 6, p. 16.

"Coll. William Cosby, Govr. of New York and New Jersey.

SIR: We have received your letters of the 29th of Aug. and 15th of Decr. 1733 and one of the 19th of June 1734 relating to the province of New York, as also your letter of the 17th of June 1734 relating to the affairs of New Jersey, with the several Acts and other public papers you mention to be enclosed.

* * * * * * *

In the Act No. 10 entitled 'An Act for confirming unto the city

of New York its Rights and Privileges' mention is made of the Charter granted by Colonel Montgomerie to the city of New York, without a copy of which we cannot judge thereof, therefore desire you will transmit us a copy of the said charter as soon as possible.

* * * * * * *

169 So we bid you heartily farewell, and are your loving friends and humble servants.

Whitehall Aug. the 22nd, 1734.

P. DOMINNGUE.
T. PELHAM.
M. BLADEN.
AR. CROFT."

EXHIBIT C 59.

Letter from Governor Cosby to Lords of Trade, N. Y. Col. Docs., Vol. 6, p. 24.

"MY LORDS: I had the Honr. of your Lordships letter of the 22 of August last, as to what relates in Generall to the affaires of New York and New Jersey.

* * * * * * *

According to your Lordships directions I send a Copy of the Charter granted by Coll. Montgomerie to the City of New York.

* * * * * * *

I am my Lords
with the greatest respect, &c. * * *

W. COSBY."

New York the 7 Dec. 1734.
To the Lords of Trade.

EXHIBIT C. 60.

"An Act Appointing Commissioners for Finally Settling and Determining the Several Rights, Titles and Claims to the Common Lands of the Township of Bergen, and for Making a Partition Thereof, in Just and Equitable Proportions, Among Those Who Shall be Adjudged by the said Commissioners to be Entitled to the Same.

Sec. 1. Whereas sundry Persons claiming to be Inhabitants and Freeholders within the Township of Bergen aforesaid, by their Petition, presented to the General Assembly of this Colony, do set forth, that Philip Carteret, Esq.; Governor of this Colony of Nova Ceasarea, or New Jersey, under the Right Honorable John Lord Berkeley and Sir George Carteret, the former Proprietors thereof, by a cer-
170 tain Deed or Instrument in Writing, purporting to be a Charter, granted to the Town and Freeholders of Bergen, and to the Villages and Plantations thereunto belonging, bearing

Date the Twenty-second day of September, in the Year of our Lord, One Thousand Six Hundred and Sixty-eight; did therein and thereby, with the consent of his council, grant and declare, among other Things Therein contained, that the Bounds and Limits of the aforesaid Town and Corporation of Bergen, was and is, to begin at the North End of Mordanis Meadow, lying upon the West Side of Hudson's River; from thence to run upon a Northwest line, by a Three Rail Fence that was then standing, to be a place called Espoten; and from thence to a little Creek, surrounding North Northwest till it comes into Hackensack River; containing in breadth from the Top of the Hill One Mile and a Half, or One Hundred and Twenty Chains; from then it runs alongst the said Hackinsack River, upon a South Southwest Line till it comes to the Point or Neck of Land that is over against Staten Island, and Shooters Island, in Arthur Cull Bay, containing in length about Twenty Miles; from thence to run Eastward along the River called Kill van Cull, that parts Staten Island and the Main, to a point or Neck of Land called Constable's Point or Constable's Hook; and from thence to run up Northward all along the Bay up into Hudson's River till it comes to Mordanis Meadow aforesaid; so that the whole Tract of Upland and Meadow, properly belonging to the Jurisdiction of the said Town and Corporation of Bergen, is bounded at the North End by a Tract of Land belonging to Capt. Nicholas Verlet and Mr. Samuel Edsall; on the East side by Hudson's River; on the South End by the Kill van Cull that parts Staten Island and the Main, and on the West side by Arthur Cull Bay and Hackinsack River; And did also, among other Things therein mentioned, grant and declare, that the Freeholders aforesaid, or the major part of them, should have power to choose their own Magistrates to be assistants to the President or Judge of the Court and for the ordering all publick affairs within the said jurisdiction; and that the freeholders aforesaid or the major part of them should have power to admit of their own Inhabitants, and to divide all proportions of Lands as are within their Bounds and limits aforesaid, that were not then already appropriated and patented by particular Persons before the Day of the Date thereof, according to their Allotments and Estates, as the Justices and Magistrates should in their Wisdom think fit; which Land being so divided!, every Man's proportion should be surveyed, butted and bounded by the
171 Surveyor, and recorded by the Secretary and Recorder General of this Colony; and after two years in Possession, should not be subject to any re-Survey or alteration, but should remain according to the first survey forever; as by the said Charter more fully and at large may appear. And the said Petitioners further set forth, That although certain Letters Patent of her late Majesty Queen Anne, issued under the great Seal of this Colony, bearing Date the Fourteenth Day of January in the Twelfth Year of her Reign confirming the aforesaid Incorporation of the said Township of Bergen; and altho' the said Letters Patent were confirmed by An Act of the Governor, Council, and General Assembly of this Colony, passed the twenty-ninth Day of January, in the Year of Our Lord, One

Thousand Seven Hundred and Thirteen, entitled an Act for Conformation of a Patent or Charter granted by His Excellency Robert Hunter, Esq.; Captain General and Governor in Chief in and over the Provinces of New Jersey and New York, and all the Territories and Tracts of Land depending thereon in America, and Vice-Admiral of the same, for the Incorporation of the Town of Bergen in the Eastern Division of the Province of Nova Caesara or New Jersey; yet neither the said Letters Patent, nor the said Act, do prescribe any Method for the Division of the Common Lands of the said Township of Bergen; but leave the same subject to such Method as is above mentioned, to be prescribed by the aforesaid Charter of Governor Philip Carteret, and that although the partition of the said Common Lands is by the aforesaid charter of Philip Carteret, directed to be made by the said Freeholders, in such Manner as the Justices and Magistrates shall think fit; yet that elective Magistrates having been a Provision in the Infancy of this Colony, and having long since been disused, except in some particular Incorporations, among which the said Township of Bergen is not to be ranked; a Partition of the aforesaid Common Lands in the Manner directed by the said Charter, is for that Reason become absolutely impossible; that, besides the Petitioners are not only at some Variance among themselves, as well concerning what Particular Tract of Land patented before the Grant of the said Charter are included within the above recited Bounds of the said Township of Bergen, and consequently concerning the Persons who may properly be deemed Freeholders of the said Township, and who tho' Freeholders with in the said Township, are; or are not intitled to Shares of the said Common Lands; but is also disputed among them, in what Proportions the said Common Lands
172 ought, by Virtue of the said Charter, to be divided among those who undoubtedly are Freeholders within the Bounds of the said Township, and are intitled to Shares of the said Common Lands; which Reasons, together with the great Number of the Persons interested, and the Infancy, Coverture, and Absence beyond Seas, of many of them, render a Partition of the said Common Lands impracticable by the Course of the Common Law, and feastible only by Commissioners to be appointed by Act of Legislature, as well for settling the several Claims to the Commons, as the respective Proportions in which the same ought to be divided; and that by Reason of the present undivided State of the said Commons, great and unnecessary Waste is daily committed, by destroying the Timber growing on the same; by which Means, if the same be not prevented by a speedy Partition of the said Commons, they will be rendered of little Value, and the Township of Bergen be reduced to great Distress for Want of Timber and Fuel; the Petitioners therefore, pray Relief in the Premises, as by the said Petition may appear." Laws N. J., 1763, page 66, Chapter XVIII.

EXHIBIT C 61.

Proceedings of said commissioners in pursuance of above act and supplements, on file in the offices of the clerks of Bergen and Hudson

counties, and in the office of the clerk of the Township of Bergen, and published in Winfield's Land Titles.

EXHIBIT C 62.

"An Act for Establishing the Boundary or Partition Line Between the Colonies of New York and Nova-Caesarea or New Jersey, and for Confirming the Titles and Possessions. Passed the 26th of September, 1772.

"Whereas the boundary or partition line between the colonies of New York and Nova-Caesarea or New Jersey, from the station on Hudson's river to the station on Delaware river, not being duly ascertained, and the extent of their respective jurisdictions remaining uncertain, and the due and regular administration of govern-
173 ment in both colonies being by that means greatly obstructed the respective legislatures of both the said colonies did, by acts for that purpose passed, concur in submitting the title and property of the lands, affected by the said boundary or partition line in both colonies, to such a method of decision as his most gracious majesty should think proper by his royal commission or otherwise, to institute and appoint; of which acts his majesty was pleased to declare his approbation, and, by his royal commission under the great seal of Great Britain, bearing date the seventh day of October, in the seventh year of his reign, did authorize and appoint certain persons therein named, or any five of them, to be his majesty's commissioners for ascertaining, settling and determining the boundary aforesaid, between the said colonies. And whereas a sufficient number of the commissioners, named in the said commission, on the seventh day of October, in the year of Our Lord, one thousand, seven hundred and sixty nine, did determine, that the boundary or partition line between the said colonies of New York and New Jersey should be a direct and straight line from the fork or branch, formed by the junction of the stream or waters called the Machackamack with the river called Delaware or Fishkill, in the latitude of forty-one degrees, twenty-one minutes and thirty-seven seconds, as found by the surveyors appointed by the said commissioners, to a rock on the west side of Hudsons river, marked by the said surveyors, in the latitude of forty-one degrees, being seventy-nine chains and twenty-seven links to the southward on a meridian from Sneyden's house, formerly Corbet's, from which determination the agents for both said colonies appeared to his majesty in his privy council. And whereas," etc.

"I. Be it therefore enacted by his Excellency the Governor, the Council, and the General Assembly, and it is hereby enacted by the authority of the same, That the said partition line, so decreed by the said commissioners, is and shall forever hereafter remain, and be the boundary and line of partition between this colony and the colony of New York.

"II. And be it further enacted, by the authority aforesaid, That

James Parker, John Stevens, and Walter Rutherford, Esquires, or any two of them, shall be, and hereby are appointed commissioners to join with such as are appointed on the part of the colony of New York, to ascertain and mark the said partition line, so that it may be sufficiently known and distinguished; and the said commissioners are hereby directed and required, to mark the before-men-
174 tioned rock, on the west side of Hudson's river, marked by the surveyors in the latitude of 41 degrees, with a straight line throughout its surface, passing through the place marked by the surveyors, and with the following words and figures, to wit, 'latitude 41 degrees north,' and on the south side thereof, the words, 'New Jersey,' and on the north side thereof, the words, 'New York;' and to mark every tree that may stand in the said line, with five notches and a blaze, on the north-west and southeast sides thereof; and to put up stone monuments at one mile distance from each other along the said line, and to number such monuments with the number of miles, the same shall be from the before-mentioned marked rock, on the west side of Hudson's river, and mark the word's 'New Jersey' on the south side, and the words 'New York' on the north side of every of the said monuments." Paterson's Laws, p. 22.

Exhibit C 63.

Section XXXVI of the Constitution of the State of New York, Adopted in the Year 1777.

Revision Statutes of New York, Edition of 1829, Vol. I, Page 37.

"And be it further ordained, that all grants of land within in this State, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but that nothing in this Constitution contained, shall be construed to affect any grants of land, within this State, made by the authority of the said King or his predecessors, or to annul any charters to bodies politic, by him or them, or any of them made prior to that day. And that none of the said charters shall be adjudged to be void, by reason of any non-user or mis-user of any of their respective rights or privileges, between the nineteenth day of April, in the year of our Lord one thousand, seven hundred and seventy-five, and the publication of this Constitution.

And further, that all such of the officers described in the said charters respectively, as, by the terms of the said charters, were to be appointed by the Governor of the Colony of New York, with or without the advice and consent of the Council of the said King, in the said Colony, shall henceforth be appointed by the council established by this Constitution for the appointment of officers in this

the Township of Woodbridge, in the County of Middlesex, into

175 EXHIBIT C 64.

"An Act Erecting the North Ward of Perth Amboy, and a Part of the Township of Woodbridge, in the County of Middlesex, into a City; and for Incorporating the Same by the Name and Title of, 'The City of Perth Amboy.'" Passed the 21st of December, 1784.

Preamble.

1. Be it therefore enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That all that tract of land and country, situate and being in the county of Middlesex, and lying within the limits and boundaries hereinafter mentioned, that is to say, beginning at the meeting of the waters of Raritan river with the waters of the sound that part Staten Island from the main, to the southward of the flat or shoal that runs off from Cole's point; thence up along the sound on the eastern bank of the channel, northeasterly and northwesterly, as the same runs to Woodbridge creek; thence up the said creek to the creek that Cutter's mill stands on; then up the said creek to a line that leads to a line between George Herriott and Grace Innfley; thence along said lane until it intersects the road leading from Perth-Amboy to New Brunswick; thence along said road, southerly, to a lane leading to Florida landing; thence along the said lane to the north corner of the farm or plantation late Samuel Nevill's esquire; thence along the line of the same to Raritan river, and across the same to the south bank of the channel thereof; thence down the same to the beginning; comprehending all the bays, harbors, creeks, rivers and waters within the said boundaries, shall be, and the same is hereby ordained, constituted and declared to be, from time to time and forever hereafter, a city and town-corporate, and shall henceforth be called, known and distinguished by the name of, 'The city of Perth Amboy,; and all persons at present residing within the said limits and boundaries, or who shall hereafter reside within the same for the space of one year, and shall take the oaths or affirmations prescribed by law, for the security of the government established in this state, under the authority of the people, before the mayor, recorder, or one of the aldermen of, or before one of the judges or justices of the peace, in
176 the said city, and shall file in the office of the clerk of the corporation, or of the town clerk, a certificate thereof, which certificate the officer administering the same is required to give, excepting only such persons who, during the late war, have been guilty of licentious cruelties in plundering or murder, contrary to the usages of civilized nations, shall from thenceforth be freemen of the said city, and shall be entitled to have and receive the same protection of their persons and properties, which the citizens of the state are entitled to have and receive therein; any law, usage or custom to the contrary in anywise notwithstanding." Paterson's Laws p. 64.

EXHIBIT C 65.

"An Act for Dividing the State into Counties," Passed March 7, 1788, 2d Greenleaf's Laws, N. Y., Page 148.

"1. Be it enacted by the people of the state of New York represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

That the State of New York shall be, and hereby is divided into sixteen counties, to be called by the names of New York, Albany, Suffolk, Queens, Kings, Richmond, West-chester, Orange, Ulster, Dutchess, Columbia, Washington, Clinton, Montgomery, Cumberland, and Gloucester.

II. And be it further enacted by the authority aforesaid, that the bounds and limits of the said several counties shall be as follows:

The county of New York to contain the islands called Manhattan's island, Great Barn island, Little Barn island, Manning's island, Nutten island, Bedlow's island, Bucking island and the Oyster islands, and all the land under the water within the following bounds: Beginning at Spuyten Duyvel creek, where the same empties itself into Hudson's river, on the West-chester side thereof, at low water mark, wherever the same now is or hereafter may be, and so running along the said creek at low water mark as aforesaid on the West-chester side thereof, unto the East river, or sound, and from thence to cross over to Nassau island, to low water mark there as aforesaid, including Great Barn Island, Little Barn island and Manning island and from thence along Nassau Island shore, at low water mark as aforesaid unto the south side of Red Hook,
177 and from thence across the North river, so as to include Nutten island, Bedlow's island, Bucking island and the Oyster islands, to low water mark on the west side of Hudson's river, or so far as the bounds of this State extend there, and so up along the west side of Hudson's river, at low water mark, or along the limits of this state, until it comes directly opposite the first mentioned creek, and thence to the place where the said boundaries first began."

EXHIBIT C. 66.

"An Act to Establish and Confirm the Charter, Rights and Privileges of the Borough of Elizabeth." Passed the 28th of November, 1789.

"1. Be it enacted by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same. That the said free borough and town of Elizabeth, from henceforth forever, may and shall be, and is hereby made and constituted a free town and borough of itself; and that all the houses and buildings, lands, water, watercourses, ponds, pools, rivers, brooks, meadows, marshes, soils, ground and grounds, situate, lying and being in

the borough and town of Elizabeth aforesaid, beginning at the mouth of Rahway river, where it falls into the Sound; thence running up said river to the mouth of Robinson's branch; thence westerly along the division line between the counties of Essex and Middlesex, until it comes to Green Brook, which divides the two counties of Essex and Somerset; thence northeasterly along Green Brook to the head thereof; thence along the line of the county of Somerset, on a direct line to the lower corner of William Dockwra's patents on Passaick river, thence down Passaick river to where Minisink path crosses the same; thence on a direct line to the bluff end of the mountain called the North Mountain; from thence along the foot of the said mountain to the division line between Newark and Elizabeth-town; thence as that line runs to dividend hill; thence to the head of the creek called Bound creek; thence down the said creek to Arthur Cull bay; thence down the said bay to the sound which parts Staten Island from Elizabeth-town; and thence down the sound to where it began, shall from henceforth be the metes, bounds and jurisdictions of the said free, town and borough of Elizabeth, and that the same, as
178 herein -butted and bounded, shall be, and the same is hereby ordained, constituted and declared to be, from time to time and for ever hereafter, a town corporate." Paterson's Laws, p. 94.

Exhibit C 67.

Laws of New York, Vol. 3, Page 217, Chapter 18.

"An Act for Altering the Wards in the City of New York." Passed the 28th of February, 1791.

"Whereas some of the wards in the city of New York are large and populous, and others are very small, and the bounds of some of them are difficult if not impossible to be ascertained, so that alterations therein are become necessary. Therefore,

Be it enacted by the People of the State of New York represented in Senate and Assembly, and it is hereby enacted by the authority of the same,

That from and after the twenty-eighth day of September next the said city of New York shall be, and hereby is divided into seven wards in the manner following, that is to say: the first ward shall begin in the middle of Nassau street at the place where it is intersected by the middle of Little Queen street, and run from the said point of intersection along the middle of Nassau street to the middle of Wall street, and then south east to the middle of Broad street, and then along the middle of Broad street to the middle of Dock street, and then easterly along the middle of Dock street to a place opposite to the middle of the street leading along the east side of the exchange, and then along the middle of the last mentioned street, to the East river, and then due south to low water mark on Nassau Island, and then along Nassua Island shore, at low water mark, unto the south side of Red Hook, and then across the North

river, so as to include Nutton Island, Bedlows island, Bucking island and the Oyster islands, to low water mark on the west side of the Hudsons river, or so far as the bounds of this State extend there, and so up along the west side of Hudsons river at low water mark, or along the limits of this State, to a place due west from the middle of the west end of Little Queen street, then due east to the middle of Little Queen street, and then along the middle of Little
179 Queen street, to the place of beginning; and shall be called the first ward.

The second ward shall begin at the southeasterly corner of the first ward, and run along the easterly bounds thereof, and so continue along the middle of Nassua street, to the middle of Crown street, and then along the middle of Crown street to Maiden Lane, and then along the middle of Maiden Lane to and across Queen street, to the middle of the street on the easterly side of the Fly Market, and then along the middle of the last mentioned street, to the East river, and then continuing the same course across the East river to low water mark on Nassua Island, and then along Nassua Island shore at low water mark to the place of beginning; and shall be called the second ward.

The third ward shall begin at the southeasterly corner of the second ward, and run along the easterly bounds thereof, to the middle of Nassua street, and then along the middle of Nassua street to a place opposite the middle of George street, and then along the middle of George street to the middle of Gold street, and then along the middle of Gold street to the middle of Ferry street, and then along the middle of Ferry street to and across Queen street and then along the middle of the street on the east side of Peck Slip Market to the East river, and then continuing the same course across the East river, to low water mark on Nassau island, and then along Nassau Island shore, at low water mark to the place of beginning; and shall be called the third ward.

The fourth ward shall begin at the northerly corner of the third ward, and run along the middle of Nassau street to a place opposite to the middle of Murray street, and then to and along the middle of Murray street to Hudsons river, and then continuing the same course across Hudsons river to low water mark, on the west side thereof, or so far as the bounds of this State extend there, and so down along the west side of Hudsons river at low water mark, or along the limits of this State, to the bounds of the first ward, and then easterly along the same to the bounds of the second ward, and then northerly along the bounds of the second and third wards to the place of beginning; and shall be called the fourth ward.

The fifth ward shall begin at the northerly corner of the third ward, and run along the bounds of the fourth ward and the middle of Chatham street to a place opposite the middle of Catherine street, and then to and along the middle of Catherine street to the East river, and then continuing the same course across the East
180 river to low water mark on Nassau island, and then along the Nassau island shore, at low water mark, to the bounds of

the third ward, and then northerly along the same, to the place of beginning; and shall be called the fifth ward.

The sixth ward shall begin at the north westerly corner of the fourth ward, and run along the northerly bounds thereof to the fifth ward, and then along the bounds of the fifth ward and the middle of the Bow-ry lane to a place opposite to the middle of Bayard street, and then to and along the middle of Bayard street to the middle of Rynders street; and then along the middle of Rynders street to the middle of Hester street, and then along the middle of Hester street to the middle of Great George street, and then along the middle of Great George street to the middle of a stone arch, built across the stream running out of the fresh water pond, and then along the middle of the said stream of water to Hudsons river, and then due west to low water mark on the west side of the said stream of water to Hudsons river, and then due west to low water mark on the west side of Hudsons river so far as the bounds of this State extend there, and so down along the west side of Hudsons river at low water mark, or along the limits of this State to the place of beginning; and shall be called the sixth ward. And

The seventh ward shall include all the residue of the said city; and shall be called the seventh ward."

Exhibit C 68.

An Ordinance Passed by the Common Council of the City of New York, April 20, 1795. Minues of Common Council of N. Y. for 1795, Vol. 11, p. 222.

"It being represented to the board, that certain persons had set up fuyck fences in the river below low water mark on the south side of Paulus' Hook, on the Jersey shore, to the obstruction of drawing seines for the taking of fish; whereupon the following ordinance was passed by the board."

"A law to prevent the setting of fences, or other obstructions, in the rivers within the limits and jurisdiction of the City of New York."

"Be it ordained, by the mayor, aldermen and commnality of the city of New York, in common council convened, and it is
181 hereby ordained by the authority of the same, that no person shall set or place any fence, or stake, or any other thing whatsoever, in any part of the rivers or bays within the limits and jurisdiction of the said city, by which the navigation of the said rivers or bays, or the casting or drawing of seines or nets, for the taking of fish could be interrupted or obstructed; and if any person shall or do set or place any fence, or stake, or any other thing whatsoever, in any part of the said rivers or bays, contrary to this law, such person shall, on conviction, forfeith and pay as a fine for each offense, the sum of eight pounds."

"And further, That it shall be lawful for any person to take up and remove any such fence or stake, or other thing, which may at

any time be found, set or placed contrary to this law as aforesaid."

"Ordered, That William Sloo, who is employed by this board to take fish for the use of the almsh se and Bridewell do cause to be taken up and removed all such nces or stakes or other things, as may or shall be set in the river, in the manner aforesaid, and which may or shall obstruct or interrupt him in casting or drawing his seine as aforesaid."

EXHIBIT C 69.

P. L. of New York, 1800, Page 7.

"An Act to Cede to the United States the Jurisdiction of Certain Islands Situate in and About the Harbour of New York. Passed February 15, 1800.

Be it enacted by the people of the State of New York represented in the Senate and Assembly, That the following islands in and about the harbour of New York, and in and about the fortifying of which this State hath heretofore expended or caused to be expended large sums of money, to wit: All that certain island called Bedlow's Island bounded on all sides by the waters of the Hudson river; and all that certain island called Oyster Island bounded on all sides by the waters of the Hudson river; and all that certain island called Governor's island, on which Fort Jay is situate, bounded on all sides by the waters of the East river and Hudson river, shall hereafter be subject to the jurisdiction of the United States, provided that this cession shall not extend to prevent the execution of any process, civil or criminal, issuing under the authority of this State,
182 but such process may be served and executed on the said islands respectively, anything herein contained notwithstanding."

EXHIBIT C 70.

Webster's Laws of New York, 1803, Volume 3, Page 225.

"An Act to Increase the Number of Wards in the City of New York, and to Equalize the same. Passed March 8th, 1803.

I. Be it enacted by the people of the State of New York, represented in Senate and Assembly, That from and after the first day of October next, the City of New York shall be and hereby is divided into nine wards, in the manner following, that is to say: The first ward shall begin in the middle of Pearl street, at the place where it is intersected by Pine street, and run from the said point of intersection along the middle of Pine street to and across the East river, in the same direction to low water mark on Nassau island, and then along Nassau Island shore at low water mark unto the south side of Red Hook, and then across the North River so as to include Nutton Island, Bedlow's Island, Bucking Island and the Oyster

Islands, to low water mark on the west side of Hudsons River, or so far as the bounds of this State extend there, and up along the west side of Hudson's River, at low water mark, or along the limits of this State, to a place due west from the middle of the west end of Thames street; then due east to the middle of Thames street; then along the middle thereof to the middle of Broadway; then along the middle thereof to a place opposite the middle of Pine street; then along the middle thereof to the place of beginning.

The second ward shall begin at the southeasterly corner of the first ward, and run along the easterly bounds thereof, across the East river to and along the middle of Pine street, to the middle of Nassau street; then along the middle of Nassau street to a point opposite the middle of George street; then along the middle of George street to and along the middle of Gold street, to the middle of Ferry street; thence along the middle of Ferry street and Peck Slip, on a direct line across the East river, to Nassau island, at low water mark; then along Nassau island, at low water mark, to the beginning.

183 The third ward shall begin on the west side of Hudson's river, at the northwesterly corner of the first ward; thence due east along that line across Hudson's river to the middle of Thames street; then along the middle thereof to the middle of Broadway; then along the middle of Broadway, to a place opposite to the middle of Pine street; then along the middle of Pine street to and along the middle of Nassau street, to a place opposite to the middle of Murray street; then to and along the middle of Murray street to Hudson's river, and then continuing the same course across Hudson's river to low water mark on the west side thereof, or so far as the bounds of this state extend there, and so down along the west side of Hudson's river at low water mark, or along the limits of this state, to the place of beginning.

The fourth ward shall begin at the northerly corner of the second ward, and run along the bounds of the third ward and middle of Chatham street to a place opposite to the middle of Catherine street, and then to and along the middle of Catherine street to the East river, and continuing the same course across the East river, to low water mark, on Nassau Island; then along Nassau Island shore, at low water mark, to the bounds of the second ward; and then northerly, along the same, to the place of beginning.

The fifth ward shall begin at the northwesterly corner of the third ward, and run along the northerly bounds thereof, to the middle of Broadway; then along the middle of Broadway, to the middle of the stone arch, built across the stream running out of the fresh water pond, and then along the middle of the said stream of water to Hudson's river, and then due west to low water mark on the west side of Hudson's river, or so far as the bounds of this state extend there, and so down along the west side of Hudson's river, at low water mark, or along the limits of this state, to the beginning.

The sixth ward shall begin at the place where Murray street

intersects Broadway; thence along the middle of Broadway to the middle of Grand street then along the middle of Grand street to the middle of the Bowery road; thence along the middle of Bowery road to the middle of Chatham street; then along the middle of Chatham street to a place opposite to the middle of Murray street; then along the middle of Murray street to the place of beginning.

The seventh ward shall begin at the southeasterly corner of the fourth ward; thence along the northerly boundary of said ward to the boundary of the sixth ward; then along the boundary
184 of the sixth ward to Bowery road; thence along the middle of Bowery road to a place opposite to the middle of Stuyvesant street; then along the middle of Stuyvesant street, in front of St. Mark church, to the East river, and on a direct course to low water mark on Nassau Island, and then along Nassau Island shore, at low water mark, to the place of beginning.

The eighth ward shall begin at the northwesterly corner of the fifth ward, and thence along the northerly bounds of the fifth ward, and along the boundary of the sixth ward, to the middle of bowery road; then along the middle of Bowery road to a place opposite to the middle of Love lane; then down along the middle of Love lane and on the same course, to low water mark on the west side of Hudson's river, or so far as the limits of this State extend there, and so down along the west side of Hudson's river, at low water mark, or along the limits of this State to the beginning.

The ninth ward shall include all the residue of the said city.

II. And be it further enacted, That the electors of each ward shall annually choose, according to law, one alderman and one assistant, two assessors, one collector and two constables; and that not less than the mayor or recorder and five aldermen and five assistants shall be a quorum of the common council of said city, or be competent to do any business."

EXHIBIT C 71.

Laws of New Jersey, 1800-6, p. 679.

"An Act to Amend the Charter Granted for the Incorporation of the Freeholders, Inhabitants of the Township of Bergen.

Whereas, the present trustees of the freeholders, inhabitants of the township of Bergen, by and with the consent and approbation of the said freeholders, duly conveyed, have by their petition to the legislature of the State of New Jersey, set forth that so early as the fourteenth day of January, in the twelfth year of the reign of Queen Anne, the said freeholders, inhabitants of the township of Bergen, obtained a charter of incorporation, giving and granting to them certain rights, privi-eges and immunities therein contained, and incorporating them the said freeholders, under the name and style of 'The Trustees of the Freeholders, inhabitants of the town-
185 ship of Bergen,' which said charter was shortly afterwards, to wit, on the twenty-ninth day of January, seventeen

hundred and thirteen, in all things confirmed by an act of the legislature of the then colony of New Jersey, under which said charter of incorporation, certain real and personal property hath been since and now is held by the said freeholders; And Whereas among other provisions in the said charter, the seven persons therein named as trustees of the said freeholders, and their successors when appointed, held their office for life, and that upon the death or other avoidance of any of the said trustees, their places were to be filled up by an election of the freeholders, summoned for that purpose by the constable or constables of the town, only by the order of the surviving trustees; and the said petitioners did further set forth, that the said provision in the said charter relative to the time that the said trustees should hold their office, and the mode of continuing their succession to office, corresponded only with the monarchial period of the government in which it originated, and did not comport with the spirit of the democratic republican form of government now so happily established, and was repugnant to the feelings of the petitioners; and the said petitioners did further set forth that the said freeholders had lately attempted to ameliorate the mode of appointing the said trustees established by the said charter by electing them at the annual town meeting without being particularly summoned by a constable under the order of the existing trustees, and that it had become doubtful, whether or not by so doing, the existence of the corporation had not become questionable, and the important rights, interests and estates by the said corporation held and enjoyed, affected and jeopardized; the petitioners therefore prayed, that the legislature would pass a law to amend the said charter in relation to the election of said trustees and re-establish all the rights, interests and estates, now actually held and enjoyed under the said charter, and would also confirm the last election by the freeholders of the said trustees for the current year; And Whereas it appears to the legislature that the contents of the said petition are true, and that the particular circumstances and inconveniences under which the said incorporation labours, furnish a case highly proper and fit for the legislative amendment and interference; Therefore,

Sec. 1. Be it enacted by the Council and General Assembly of this State, and is hereby enacted by the authority of the same, That from and after the passing of this act, it shall and may be lawful for the freeholders, inhabitants of the township of Bergen, on every
186 first Monday in May, hereafter, at the hour of ten o'clock in the forenoon, to meet and assemble at the same place where the annual town-meeting for the said township is held, and then and there by a plurality of the votes of the said freeholders, then met and assembled, to elect and choose out of the whole body of the said freeholders seven persons as trustees of the freeholders, inhabitants of the township of Bergen; which said seven persons when so elected and chosen, shall be and continue in office, for the term of one year next after such election, and for and during said term of one year, shall be invested with and shall hold and enjoy all the rights, privileges, powers and authorities whatsoever, which by the before mentioned charter of incorporation, and the act of confirm-

ing the same, were granted and invested in the seven persons therein named, and their successors, duly appointed conformably to the said charter, anything in the said charter or in the act of confirming the same, to the contrary in any wise nothwithstanding.

Sec. 2. And be it enacted, That in case any one or more of the offices of the said seven trustees shall become vacant by death, resignation or otherwise, it shall and may be lawful for the remaining trustees, or a majority of them, to order and direct the person officiating as clerk to their board, to put up written notices in three of the most public places in the township at least ten days before the day of meeting, advertising to the freeholders of the said township the time and place of their assembling, for the purpose of choosing fit persons to fill up such office or offices which have become vacant as aforesaid; and any person or persons so elected to such vacant office or offices, shall be and remain a trustee of trustees, and shall have all the power incident to the office of a trustees till the next general election of trustees shall take place.

Sec. 3. And be it enacted, That the said charter of incorporation, with all the powers, authorities, privileges, rights, interests and immunities therein contained, except as herein before altered, amended and provided for, and excepting also so much of said charter as may be repugnant to the constitution of this State and of the United States, shall be and remain firm, valid, confirmed and effectual to all intents and purposes whatsoever.

Sec. 4. And be it enacted, That John Van Houten, Garret I. Van Rypen, Peter Sip, Jacob Van Wagener, Jerry Van Winkle, John Van Horn, and Casparus Prior, the persons appointed and chosen trustees of the freeholders, inhabitants of the township of Bergen, by a vote of the said freeholders, and now acting as such trus-
187 tees, shall be and remain trustees of the said freeholders, inhabitants of the township of Bergen, with the same powers and authorities as if they and each of them had been appointed to the office of trustee aforesaid after the manner and form prescribed by the aforesaid charter of incorporation; and they the said abovenamed persons shall remain and continue trustees aforesaid till the next general election ordained and established in and by this act.

Sec. 5. And be it enacted, That all deeds, mortgages, bonds, bills, notes of hand, securities, engagements and contracts, of every nature and kind, and all interests, property and estates, real and personal, of every nature and kind, given, granted to, had, held, possessed or enjoyed, by the said incorporation, shall be vested in, continue and remain to the said incorporation, in the same manner and form, in all respects and to all intents and purposes, the same as if the aforesaid trustees and their predecessors in office had, from time to time been duly elected and appointed to office, according to the mode and plan prescribed by the aforesaid charter; and all grants, conveyances, mortgages, bonds, notes, contracts and engagements of every nature and kind, given, made done and entered into, by the persons acting as trustees of the freeholders, inhabitants of the township of Bergen, under an election of the said freeholders, shall be as firm, valid, and effectual, to all intents and purposes, against

the trustees hereby ordained and established, and their successors, as if the same trustees, so elected by the said freeholders, had been duly appointed according to the manner and form prescribed in and by the charter aforesaid.

Passed at Trenton, March 12, 1806."

EXHIBIT C 72.

"The Act to Divide the Seventh Ward into towns wards," passed March 18th, 1808, Pamphlet Laws of New York, 1808, P. 58, is offered simply for the purpose of accounting for the number of wards referred to in subsequent statutes. It contains nothing else relevant to the question.

188 EXHIBIT C 73.

"An Act Relative to the Jurisdiction of This State, Over the Territory Therein Mentioned," Passed April 6th, 1808, P. L. of N. Y., 1808, p. 136.

"Whereas, the legislature of the State of New Jersey, by an act passed on the second day of November, in the year 1806, entitled 'An Act concerning the eastern boundary of the State of New Jersey,' after reciting that King Charles the 2d had granted to James, Duke of York, sundry tracts of land in America whereof the now State of New Jersey and the now State of New York were then part, together with all the islands, soils, rivers, waters, harbors, royalties and certain powers of government in and over the same; and that the Duke of York granted the then province and now State of New Jersey, being described in the said grant of land as a tract adjacent to New England and lying and being to the westward of Long Island and Manhattan Island, and bounded on the east in part by the main sea and in part by Hudson's river, together with the said royalties and powers of government over the same, to John Lord Berkeley and Sir George Carteret, and their assigns, who used and exercised all such royalties and powers of government until they surrendered the same unto the crown of Great Brittain, and that afterwards the said respective provinces of New Jersey and New York became severally independent sovereign States, in virtue whereof, and the premises aforesaid, the said State of New Jersey became vested with full right and lawful authority to exercise jurisdiction in and over the said Hudson River, and the said main sea, and all the ports, harbors and havens lying adjacent to and along the Jersey shore and coasts, in such manner as belongs to a sovereign and independent state to use and exercise; and that it was highly expedient that the State of New York and the State of New Jersey should enter into a mutual agreement, in respect to the exercise of their several and respective jurisdiction and their several claims of territory, whenever they may be supposed to interfere, in such way as might best promote mutual accommodations, harmony and good understanding

between them forever. To these ends therefore, A. Ogden, William S. Pennington, James Parker, Lewis Condict and Alexander C. McWhorter, Esquires, or a majority of them, were by the said act, appointed commissioners, with full power and authority in behalf of New Jersey, to meet and make final agreement in regard
189 to the premises, with commissioners on behalf of this State, to be appointed by a law of this State with like powers, if to them it shall seem expedient, in such manner as finally to settle the limits and extent within which they shall exercise their right of jurisdiction respectively, in and over all the waters lying and being between the shores of the said states respectively; and further, finally to settle and determine the eastern boundary of the State of New Jersey, as to them by mutual agreement, might seem just and reasonable, which agreement, in writing, signed and sealed by the said commissioners respectively, if made on or before the fifteenth day of November then next, should become binding on the said state, when confirmed by the respective commissioners of New York and New Jersey; and the said act having been submitted by the Governor of the said State of New Jersey to the governor of this state and by him laid before the legislature, they thereupon, by an act, passed on the third day of April last, entitled 'An Act respecting a claim for the extension of the eastern boundary of the State of New Jersey,' appointed Ezra L'Hommedieu, Samuel Jones, Egbert Benson, Simeon DeWitt and Joseph C. Yates, Esquires, or a majority of them, commissioners, with full power and authority to meet, confer and agree with the said commissioners of the State of New Jersey, respecting the said claims of the said State of New Jersey; provided, that such agreement should not be binding on this State, unless made on or before the said fifteenth day of November, and confirmed and ratified by the respective commissioners of New Jersey and New York, within one year after it shall be made. And whereas, the said commissioners, appointed by the said States respectively, met at Newark, State of New Jersey, in the month of September last, and conferences and proceedings were then and there had between them respecting the said matters so referred to them, and they afterwards separated without any such agreement, as is above intended, taking place between them; and the said commissioners on the part of this State have thereupon made their report of the said conferences and proceedings, to the governor of this State, by whom the same hath been laid before the legislature, and inasmuch as it contains or states, 'that the commissioners on the part of the State of New Jersey, claim on behalf of their State, as comprehended in the grant from the Duke of York to Berkeley and Carteret, Staten Island, the Hudson ad filem aquæ, and all the ports, harbors, bays and arms of the sea lying contiguous to the shore of New Jersey, and infra terræ, as far down as Sandy Hook,' and inasmuch
190 as it further contains or states, 'that New York has, cœval with the commencement of the colonial governments of the two states, hitherto actually and constantly exercised or possessed the jurisdiction over the river Hudson and Staten Island, and the bay between it and Long Island as a portion of her rightful

territory,' as by the said report may, among other things, more fully appear; and the legislature having duly considered the said report, have thereupon judged it advisable for the preservation and maintenance of such jurisdiction over the said territory, consisting of the said river, island and bay, above specified, to make such provisions as are hereinafter contained.

Be it therefore enacted by the people of the State of New York represented in the Senate and General Assembly. That it shall be and it is hereby declared to be the duty of the person administering the government of this state, for the time being, and all subordinate officers, according to their respective powers, authorities and functions, and by all lawful ways and means, to preserve, maintain and defend the jurisdiction of this state in and over the said territory until this state shall be evicted thereof by due course of law.

And be it further enacted, That if any person shall, within the said territory oppose, disturb or hinder any public officer of this state, in the execution of his office, or do any other unlawful act as under the authority of the state of New Jersey, or by colour or pretext that the place where such act was done, was not within the jurisdiction of this state, any person so offending shall be deemed guilty of a high crime and misdemeanor against this state and shall on conviction, be punished by fine or imprisonment, or both, in the discretion of the court before whom the conviction shall be had.

And be it further enacted, That the whole of the said river Hudson, southward of the northern boundary of the City of New York, and the whole of the said bay between Staten Island and Long or Nassau Island, shall so far forth be deemed to be within the jurisdiction of the City and County of New York as that all offences against this act shall be cognizable in the courts held in and for the said city and county. And further, it is hereby declared that the courts of oyer and terminer and general session of the peace, held in and for the said city and county, shall have cognizance of the said offenses.

And be it further enacted, That if at any time, any suit or other proceeding shall be instituted or commenced by the State of
191 New Jersey against this state, to recover the said territory, or any parcel thereof, the person administering the government of this state for the time being, shall retain and employ counsel, and otherwise provide for the defence of this state, in every such suit or proceeding, as shall be requisite, and in order to defray the expense thereof, that he may from time to time, draw from the treasury of this state a sum or sums in the whole not*e* to exceed three thousand dollars.

And be it further enacted, That the period which expired on the fifteenth day of November, mentioned in the above act of the legislature of this state, shall be and hereby is extended to the first day of January next, and the power and authority granted in and by the said act to the said commissioners therein named, are hereby revived and continued accordingly; in addition, however, to the proviso contained in the said act, it is hereby further provided and declared, that it shall be expressly provided in the agreement, if

any, which may be made between the said commissioners and the commissioners on the part of the State of New Jersey, that nothing in such agreement contained, shall be construed to enable or authorize the United States to make or establish a port or ports on or within the said river Hudson or the said bay between Staten Island and Long or Nassau Island, otherwise than as within the limits or territory of this State."

EXHIBIT C 74.

P. L. of New York, 1813, Page 342.

An Act to Reduce Several Laws, Relating Particularly to the City of New York, into One Act. Passed April 9, 1813.

Division of the City into Wards.

"I. Be it enacted by the people of the State of New York, represented in Senate and Assembly, That the city of New York shall continue to be divided into ten wards in the manner following, that is to say: The first ward shall begin in the middle of Pearl street, at the place where it is intersected by Pine street, and run from the said point of intersection along the middle of Pine street to and across the East river, in the same direction to low water mark
192 on Nassau Island, and then along Nassau Island shore, at low water mark, unto the south side of Red Hook, and then across the North River (so as to include Nutten Island, Bedlow's Island, Bucking Island and the Oyster Islands, and all the waters of this State in the bay of New York, and the southward thereof, and not comprehended in any other county) to low water mark on the west side of Hudson's River, or so far as the bounds of this State extend there, and up along the west side of Hudson's river at low water mark, or along the limits of this state to a place due west from the middle of the west end of Thames street, then due east to the middle of Thames street, then along the middle thereof to the middle of Broadway, then along the middle thereof to a place opposite to the middle of Pine street, then along the middle thereof to the place of beginning.

The second ward shall begin at the southeasterly corner of the first ward, and run along the easterly bounds thereof across the East River, to and along the middle of Pine street, to the middle of Nassau street, then along the middle of Nassau street, to a point opposite to the middle of George street, then along the middle of George street to and along the middle of Gold street, to the middle of Ferry street, then along the middle of Ferry street and Peck slip, on a direct line across the East River, to Nassau Island, at low water mark, then along Nassau Island at low water mark, to the place of beginning.

The third ward shall begin on the west side of Hudson's River at the northwesterly corner of the first ward, then due east along that line, across Hudson's River to the middle of Thames street,

then along the middle thereof to the middle of Broadway, then along the middle of Broadway, to a place opposite to the middle of Pine street, then along the middle of Pine street to and along the middle of Nassau street to a place opposite to the middle of Murray street, then to and along the middle of Murray street, to Hudsons River, and then continuing the same course across Hudsons' River, to low water mark on the west side thereof, or so far as the bounds of this State extend there, and so down along the west side of Hudson's river at low water mark, or along the limits of this State, to the place of beginning.

The fourth ward shall begin at the northerly corner of the second ward and run along the bounds of the third ward, and middle of Chatham street, to a place opposite to the middle of Catherine street, and then to and along the middle of Catherine street, to the East River, and continuing the same course across the East river, to low water mark, on Nassau Island; then along Nassau Island
193 shore at low water mark, to the bounds of the second ward, and then northerly along the same to the place of beginning.

The fifth ward shall begin at the northwesterly corner of the third ward, and run along the northerly bounds thereof to the middle of Broadway; then along the middle of Broadway to the middle of the stone arch built across the stream running out of the fresh water pond, and then along the middle of the said stream of water, to Hudson's river, and then due west to low water mark on the west side of Hudson's River, or so far as the bounds of this State extend there, and so down along the west side of Hudson's River, at low water mark, or along the limits of this state to the place of beginning.

The sixth ward shall begin at the place where Murray street intersects Broadway; thence along the middle of Broadway to the middle of Grand street, then along the middle of Grand street to the middle of the Bowery road; thence along the middle of the Bowery road to the middle of Chatham street, then along the middle of Chatham street, to a place opposite to the middle of Murray street, then along the middle of Murray street, to the place of beginning.

The seventh ward shall begin at the southeasterly corner of the fourth ward; thence along the easterly boundary of the said ward, up Catherine street to the middle of Division street, then along the middle of Division street to the middle of Grand street, and then along the middle of Grand street to the East River, and continuing the same course across the East River to low water mark on Nassau Island, then along Nassau Island shore, at low water mark, to the place of beginning.

The eight- ward shall begin at the northwesterly corner of the fifth ward, and thence along the northerly bounds of the fifth ward, and along the boundary of the sixth ward to the middle of the Bowery road; then along the middle of the Bowery road to a place opposite to the middle of Love Lane, then down along the middle of Love lane, and on the same course to low water mark on the west side of Hudson's river, or so far as the limits of this State extend there, and so down along the west side of Hudson's river, at low

water mark, or along the limits of this State, to the place of beginning.

The ninth ward shall include all the part of the said city which lies to the northward and eastward of a line beginning at the northwesterly corner of the eighth ward, and running along the northerly bounds thereof, to the middle of Bowery road, then down
194 Bowery road to a place opposite to the middle of a street or road called Stuyvesant street; then along the middle of the said Stuyvesant street, in front of St. Marks Church, to the East river, and continuing the same course across the East river, to low water mark on Nassau Island.

The tenth ward shall include all the residue of the said city.

II. And be it further enacted, That the electors of each ward shall annually choose, according to law, one alderman and one assistant; two assessors, one collector and two constables; and that not less than the mayor or recorder, and five aldermen, and five assistants, shall be a quorum of the common council of the said city, or to be competent to do any business.

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EXHIBIT C. 75.

Section XIV of the Constitution of the State of New York. Adopted in the Year 1821.

Revised Statutes of New York, Edition of 1829, Vol. 1, Page 54.

"All grants of land within this state, made by the King of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this state made by the authority of the said King or his predecessors, or shall annul any charters to bodies politic or corporate, by him or them made, before that day; or shall affect any such grants or charters since made by this state, or by persons acting under its authority; or shall impair the obligation of any debts contracted by the state, or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice."

195 EXHIBIT C 76.

Laws of New York, Vol. 10, Page 286.

An Act to Equalize and Increase the Number of Wards in the City of New York. Passed April 16, 1825.

"I. Be it enacted by the people of the State of New York represented in Senate and Assembly, That the City of New York shall be divided into twelve wards, in the manner following, that is to say: The first ward shall begin in the middle of Broadway, at a point

where it is intersected by the middle of Liberty street, and runs from the said point of intersection, through the middle of Liberty street, southeasterly, to the middle of Maiden-lane; thence down the middle of Maiden-lane, and from thence in a straight line, running in the same direction across the East river, to low water mark on Nassau Island; and thence along Nassau Island shore, at low water mark, to the south side of Red Hook; and thence across Hudson river (so as to include Nutten Island, Bedlow's Island, Bucking Island, and the Oyster Islands, and all the waters of this state in the bay of New York, and to the southward thereof, and which are not comprehended in any other county), to low water mark on the west side of Hudson's river, or so far as the bounds of this state extend; thence up along the west side of Hudson's river, at low water mark, or along the limits of this state, to a place due west from the middle of Liberty street; thence through the middle of Liberty street to the middle of Broadway, at the place of beginning.

The second ward shall begin at the southeasterly corner of the first ward, and run along the easterly bounds thereof, across the East river, to the middle of Broadway; thence up the middle of Broadway, to a point opposite the middle of Chatham street; thence through the middle of Chatham street, to a point opposite to the middle of Spruce (formerly George) street; thence down the middle of Spruce street, to the middle of Gold street; thence through the middle of Gold street, to a point opposite to the middle of Ferry street; thence through the middle of Ferry street, in a line running in the same direction across the East river, to Nassau Island, at low water mark; thence along Nassau Island, at low water mark, to the place of beginning.

The third ward shall begin on the west side of Hudson's river, at the northwesterly corner of the first ward, and running
196 thence due east, to the middle of Liberty street; thence through the middle of Liberty street, to the middle of Broadway; thence through the middle of Broadway, to a point opposite to the middle of Reed street; thence through the middle of Reed street, in a line running in the same direction across Hudson's river to low water mark, on the west side thereof, or so far as the bounds of the state extend; thence down the west side of Hudson's river, at low water mark, or along the limits of this state, to the place of beginning.

The fourth ward shall begin at the northerly corner of the second ward, and run through the middle of Chatham street, to a point opposite to the middle of Catherine street; and thence through the middle of Catherine street, in a line running in the same direction across the East River to low water mark, on Nassau Island; thence along Nassau Island shore, at low water mark, to the bounds of the second ward, and thence northwesterly along the bounds of the second ward, to the place of beginning.

The fifth ward shall begin at the northwesterly corner of the third ward, and run along the northerly bounds thereof, to the middle of Broadway; thence through the middle of Broadway to the middle

of Canal street; thence through the middle of Canal street to Hudson's river; thence due west to low water mark, at the west side of Hudson's river or so far as the bounds of this state extend; thence down along the west side of Hudson's river, at low water mark, or along the limits of this state, to the place of beginning.

The sixth ward shall begin at a point in the middle of Broadway, where it is intersected by the middle of Reed street, and runs thence through the middle of Broadway, to where it is intersected by the middle of Grand street; thence through the middle of Grand street to the middle of the Bowery road; thence through the middle of the Bowery road, to the middle of Chatham street; thence through the middle of Chatham street, to the middle of Broadway; thence through the middle of Broadway to the place of beginning.

The seventh ward shall begin at the southeasterly corner of the fourth ward, and run thence along the easterly boundary of the fourth ward, to the middle of Division street; thence through the middle of Division street to the middle of Grand street; thence through the middle of Grand street, in a line running in the same direction, across the East river, to low water mark on Nassau Island; thence along Nassau Island shore, at low water mark, to the place of beginning.

197 The eighth ward shall begin at the northwesterly corner of the fifth ward, and run thence along the northerly bounds of the said ward, to the middle of Broadway; thence through the middle of Broadway, to a point opposite to the middle of Grand street; thence through the middle of Grand street, to the middle of the Bowery road; thence through the middle of the Bowery road, to a point opposite to the middle of North street, and of Houston street, as ordered to be extended and continued; thence through the middle of said street, so ordered to be extended and continued, and through the middle of Houston street, to a point opposite to the middle of Hammersley street; thence through the middle of Hammersley stree to Hudson's river; thence due west to low water mark on the west side of Hudson's River, or so far as the limits of this State extend; thence down along the west side of Hudson's River, at low water mark, or along the limits of this State, to the place of beginning.

The ninth ward shall begin at the northwesterly corner of the eighth ward, and run thence along the northerly bounds of the said ward to the middle of the Bowery road; then through the middle of the Bowery road to a point opposite to the middle of Fourteenth street; thence along the middle of Fourteenth street to Hudson's River; thence due west to low water mark on the west side of Hudson's river, or so far as the limits of this State extend; thence down along the west side of Hudson's river at low water mark, or along the limits of this State to the place of beginning.

The tenth ward shall begin at the northeasterly corner of the seventh ward, and run thence along the easterly and northerly bounds of the said ward to the middle of the Bowery road; thence through the middle of the Bowery road to where it is intersected by the middle of Rivington street; thence through the middle of Rivington

street in a line running in the same direction across the East river to low water mark on Nassau Island, and thence along Nassau Island shore, at low water mark as aforesaid to the place of beginning.

The eleventh ward shall begin at the northeastern corner of the tenth ward, and run thence along the northeasterly bounds of the said ward to the middle of the Bowery road; thence through the middle of the Bowery road to where it is intersected by the middle of Fourteenth street; thence through the middle of Fourteenth street, in a line running in the same direction across the East river, to low water mark on Nassau Island, and thence along Nassau Island shore, at low water mark as aforesaid, to the place of beginning.

198 The twelfth ward shall include all the residue of the said city.

II. And be it further enacted, That the electors of each ward shall annually choose, according to law, one alderman and one assistant, two assessors, one collector and two constables; and that on and after the last Monday in December next, not less than the Mayor or recorder of the said city, and seven aldermen and seven assistants, shall be a quorum of the common council of the said city, or be competent to do any business.

III. And be it further enacted, That the assistant justices already appointed, or hereafter to be appointed (pursuant to the act of the fourth of January, 1820, entitled "An Act to amend an act, entitled 'An act to reduce several laws relating particularly to the city of New York, into one act,'" so far as it relates to assistant justices), for the fifth and eighth wards, shall have and exercise jurisdiction in the fifth, eighth and ninth wards, as herein established, to all and every intent and purpose whatsoever; and that the justices appointed, or hereafter to be appointed under the said act, for the seventh and tenth wards, shall have and exercise jurisdiction in the seventh, tenth, and eleventh wards, as herein established, to all and every intent and purpose whatsoever; and that the justices appointed in and for the ninth ward of the said city, shall only have jurisdiction in the twelfth ward of the said city, as herein established, and shall hereafter be appointed for such twelfth ward, and not for the ninth ward as heretofore; provided, however, that this section shall not take effect until after the expiration of the period during which the said justices now appointed are authorized to hold their offices.

IV. And be it further enacted, That all laws relating to the wards of the said city, shall be considered as applying to the wards, and the number of wards, as they are established in and by this act; and that all powers that are to be executed, or appointments to be made in or for the several wards of the said city, shall be executed, made and done for the additional wards herein established, in like manner as if the number of wards in any such number that may be named in any such law.

V. And be it further enacted, That the assistant justices of the ninth ward shall have jurisdiction in all civil actions now cognizable before the said justices, where the amount shall not exceed fifty dollars in the like manner as the said several other assistant justices of the said city now have jurisdiction, and subject to the like rights of appeal, as is now provided by law in relation to the said last mentioned justices."

199 EXHIBIT C 77.

Revised Statutes of N. Y. (1829), Vol. 1, p. 61.

"An Act Concerning the Territorial Limits and Divisions, the Civil Polity, and the Internal Administration of this State.

"Whereas it is expedient that the several statutes of this State, relating to its territorial limits and divisions, its civil polity, and its internal administration, should be consolidated and arranged in appropriate chapters, titles and articles; and that the language thereof should be simplified and that omissions and other defects should be supplied and amended; therefore

The people of the State of New York represented in Senate and General Assembly, do declare and enact as follows

Chapter I.

Of the Boundaries of the State and its Territorial Jurisdiction.

Title I.

Of the Boundaries of the State.

Sec. 1. It being deemed useful for the information of the citizens and officers of this State, that its boundaries, so far as its jurisdiction is now asserted, should be declared, it is therefore declared, that the State of New York is bounded as follows: Beginning at Lyon's Point in the mouth of a brook or river called Byram's River, where it falls into Long Island Sound and running thence up along said river," etc., (along the boundaries of Connecticut, Massachusetts and Vermont to St. Lawrence river, thence westerly and southerly along division line between United States and British Dominions, through Lakes Erie and Ontario to boundary line of Pennsylvania, thence easterly along said line to Delaware river, thence down said river), "to the termination of the east bank of the Delaware river on a line run in the year 1774 by Wm. Wickham and Samuel Gale commissioners on the part of the then colony of New York and John Stevens and Walter Rutherford, commissioners on the part of the then colony of New Jersey; thence along said line to a rock on the west side of Hudson's river in latitude 41° north marked by
200 said commissioners; thence southerly along the west shore, at low water mark of Hudson's river, of the Kill Von Kull of the Sound between Staten Island and New Jersey and of Raritan Bay to Sandy Hook and thence to the place of beginning in such manner as to include Staten Island and the Islands of Meadow on the west side thereof, Shooters Island, Long Island and the Isle of Wight, now called Gardiner's Island, Fisher's Island, Shelter Island, Plumb Island, Robin's Island, Ram Island, the Gull Islands, and all the islands and waters in the bay of New York and within the bounds above described."

Exhibit C 78.

Following the foregoing description of the boundaries of the State is

"An Act Concerning the Sovereignty and Jurisdiction of the State."

Being Title II of Chapter I.

Revised Statutes of N. Y. (1829), Vol. 1, p. 65.

"Section 1. The sovereignty and jurisdiction of this State extend to all the places within the boundaries thereof as declared in the preceding title, but the extent of such jurisdiction over places that have been or may be ceded to the United States shall be qualified by the terms of such cession.

Sec. 2. It shall be the duty of the governor and of all the subordinate officers of the State to maintain and defend its sovereignty and jurisdiction."

Exhibit C 79.

Section 1, Consisting of Fourteen Paragrahphs, of Title V, Chapter II, Part 1, of the Revised Statutes of the State of New York, Edition of 1829, Vol. 3, p. 121.

"Section 1. The City of New York contains all that part of this state comprehended within the bounds of the county of New
201 York; and is divided into fourteen wards, in the manner following, that is to say,

1. The first ward shall begin in the middle of Broadway, at a point where it is intersected by the middle of Liberty street, and runs from the said point of intersection, through the middle of Liberty street, southeasterly, to the middle of Maiden Lane; then down the middle of Maiden Lane, and from thence in a straight line running in the same direction across the East river, to low water mark on Nassau or Long Island; and thence along Nassau or Long Island shore, at low water mark, to the south side of Red Hook; and then across Hudson's river, so as to include Nutten Island, Bedlow's Island, Bucking Island, and the Oyster Islands, and all the waters of this State in the bay of New York, and to the southward thereof, and which are not comprehended in any other county, to low water mark on the west side of Hudson's river, or so far as the bounds of this state extend; then up along the west side of Hudson's river at low water mark, or along the limits of this State to a place due west from the middle of the west end of Liberty street; then to the middle of Liberty street; then through the middle of Liberty street to the middle of Broadway, at the place of beginning.

2. The Second Ward shall begin at the southeasterly corner of the First ward, and run thence along the easterly bounds thereof,

across the East river to the middle of Broadway; then up the middle of Broadway, to a point opposite the middle of Chatham street; then through the middle of Chatham street, to a point opposite to the middle of Spruce (formerly George) street; then down the middle of Spruce street, to the middle of Gold street; then through the middle of Gold street, to a point opposite to the middle of Ferry street; then through the middle of Ferry street, in a line running in the same direction across the East river, to Nassau or Long Island, to low water mark, then along Nassau or Long Island, at low water mark to the place of beginning.

3. The Third ward shall begin on the west side of Hudson's river, at the northwesterly corner of the First ward, and running thence due east, to the middle of Liberty street; then through the middle of Liberty street to the middle of Broadway; then through the middle of Broadway, to a point opposite to the middle of Reed street; then through the middle of Reed street, in a line running in the same direction across Hudson's river, to low water mark, on the west side thereof, or so far as the bounds of the state extend; then down the west side of Hudson's river, at low water mark, or along the
202 limits of this state, to the place of beginning.

4. The Fourth ward shall begin at the northerly corner of the second ward, and run thence through the middle of Chatham street, to a point opposite to the middle of Catherine street; and then through the middle of Catherine street, in a line running in the same direction across the East river, to low water mark, on Nassau or Long Island; then along Nassau or Long Island shore, at low water mark, to the bounds of the second ward; and then northwesterly along the bounds of the second ward to the place of beginning.

5. The Fifth ward shall begin at the northwesterly corner of the third ward and run thence along the northerly bounds thereof, to the middle of Broadway; then through the middle of Broadway, to the middle of Canal street; then through the middle of Canal street to Hudson's river; then due west to low water mark, on the west side of Hudson's river, or so far as the bounds of this state extend; then down along the west side of Hudson's river, at low water mark, or along the limits of this state, to the place of beginning.

6. The Sixth ward shall begin at a point in the middle of Broadway, where it is intersected by the middle of Canal street, and run thence through the middle of Canal street, to where it is intersected by the middle of Collect street; then through the middle of Collect street, to the middle of Pump street; then through the middle of Pump street to the middle of the Bowery road; then through the middle of the Bowery road, to the middle of Chatham street; then through the middle of Chatham street, to the middle of Broadway; and then through the middle of Broadway to the place of beginning.

7. The Seventh ward shall begin at the southeasterly corner of the fourth ward and run thence along the easterly boundary of the fourth ward, to the middle of Division street; then through the middle of Division street, to the middle of Grand street; then through the middle of Grand street, in a line running in the same

direction across the East river, to low water mark on Nassau or Long Island; then along Nassau or Long Island shore at low water mark, to the place of beginning.

8. The Eighth ward shall begin at the northwesterly corner of the Fifth ward, and run thence along the northerly bounds of the said ward, through Canal street to the middle of Broadway; then through the middle of Broadway to a point opposite to the middle of Houston street; then through the middle of Houston street
203 to a point opposite to the middle of Hamersly street; then through the middle of Hamersly street to Hudson's river; then due west to low water mark, on the west side of Hudson's river, or so far as the limits of this state extend; then down along the west side of Hudson's river at low water mark, or along the limits of this State, to the place of beginning.

9. The ninth ward shall begin at the northwesterly corner of the eighth ward, and run thence along the northerly bounds of said ward through the middle of Hamersly and Houston streets, and continuing on through the middle of Houston street, to the middle of the Bowery road; then through the middle of the Bowery road to a point opposite the middle of Fourteenth street; then through the middle of Fourteenth street to Hudson's river; then due west to low water mark on the west side of Hudson's river, or so far as the limits of this State extend; then down along the west side of Hudson's river at low water mark, or along the limits of this State, to the place of beginning.

10. The Tenth Ward shall begin at a point in the middle of the Bowery road, opposite to the middle of Division street; then through the middle of Division street to the middle of Norfolk street; then through the middle of Norfolk street to the middle of Rivington street; then through the middle of Rivington street to the Middle of the Bowery road; then through the middle of the Bowery road to the place of beginning.

11. The Eleventh Ward shall begin at the northeasterly corner of the tenth ward, being at the intersection of Norfolk and Rivington streets, and run thence through the middle of Rivington street to the middle of the Bowery road; then through the middle of the Bowery road to where it is intersected by the middle of Fourteenth street; then through the middle of Fourteenth street. in a line running in the same direction, across the East river to low water mark on Nassau Island; then along Nassau Island shore, at low water mark, to a point opposite the middle of the east end of Rivington street; then in a direct line across the East river, through the middle of Rivington street, to the place of beginning.

12. The Twelfth Ward shall include all that part of the city and county of New York, lying to the northward and eastward of the middle of Fourteenth street.

13. The Thirteenth Ward shall begin at the northeasterly corner of the seventh ward, and run thence along the easterly and northerly line of the said ward through the middle of Grand and Division streets; to the middle of Norfolk street; then through the
204 middle of Norfolk street to where it is intersected by the middle of Rivington street; then through the middle of Riv-

ington street, in a line running in the same direction across the East river, to low water mark on Nassau Island; and then along the shore of said island, at low water mark, to the place of beginning.

14. The Fourteenth Ward shall begin at a point in the middle of the Bowery road, where it is intersected by the middle of Pump street; then through the middle of the Bowery road to a point opposite the middle of Houston street; then through the middle of Houston street to where it is intersected by the middle of Broadway; then through the middle of Broadway to where it is intersected by the middle of Canal street; and then through the middle of Canal, Collect and Pump streets, being along the northerly bounds of the Sixth ward, to the place of beginning."

EXHIBIT C 80.

New York Laws of 1833, Chapter VI, Page 6.

"An Act Concerning the Territorial Limits and Jurisdiction of the State of New York and the State of New Jersey, Passed January 18, 1833.

The people of the State of New York represented in Senate and Assembly, do enact as follows:

Section 1. The Governor shall appoint three commissioners, who shall have full power, on the part of the state of New York, to meet commissioners appointed, or who may be appointed, under or by virtue of a law of the legislature of the state of New Jersey, to negotiate and agree respecting the territorial limits and jurisdiction of the state of New York and the state of New Jersey. And if by death, resignation or otherwise, a vacancy do happen among those appointed by the state of New York, the governor, or person administering the government of this state is hereby authorized to supply the same.

Sec. 2. The said commissioners on the part of the state of New York, or the major part of them, shall have full power and authority to agree upon, settle and determine the limits and jurisdiction between the said states, as to them may seem just; and their
205 agreement in the premises in writing, signed and sealed by the said commissioners of both states, or a majority of them respectively, if made on or before the first Tuesday of January next, shall become binding on the state of New York, when confirmed by the respective Legislatures of New York and New Jersey, and approved by Congress.

Sec. 3. The said commissioners shall meet at such time and place as they may agree upon.

Sec. 4. The Governor, or person administering the government of this state, shall transmit to the Governor, or person administering the government of the state of New Jersey, a copy of this Act.

Sec. 5. The commissioners who act in the premises, shall each

be entitled to receive five dollars per day for every day they may be employed in discharging their duties under this act, and fifteen cents per mile for every mile they shall necessarily travel, in going to and returning from any meeting of the said commissioners, to be paid by the treasurer, on the warrant of the comptroller."

EXHIBIT C 81.

"An Act for the Settlement of the Territorial Limits and Jurisdiction Between the States of New Jersey and New York.

"Whereas the legislature of the state of New York have recently passed a law authorizing the governor of that state to appoint commissioners to meet commissioners on the part of this state, to negotiate and agree respecting the territorial limits and jurisdiction of the state of New Jersey and the state of New York. And whereas it is expedient and desirable that the defference heretofore existing on this subject should be amicably and speedily adjusted; therefore,

"Sec. 1. Be it Enacted, by the Council and General Assembly of this State, and it is hereby enacted by the authority of the same, That the governor of this State, or the person administering the government of the same, be, and he is hereby authorized to appoint three commissioners, with full power, on the part of New Jersey, to meet commissioners, appointed or to be appointed under or by virtue of a law of New York, passed January the eighteenth, eighteen hundred and thirty-three, and with them to negotiate and agree respecting the territorial limits and jurisdiction between the said states, as to them may seem just; and if, by death, resigna-
206 tion, or otherwise, a vacancy do happen among those appointed by the state of New Jersey, the governor, or person administering the government of this State, is hereby authorized to supply the same.

"Sec. 2. And be it enacted, That the said Commissioners on the part of the State of New Jersey, or a major of them, shall have full power and authority to agree upon, settle, and determine the limits of territory and jurisdiction between the said States, as to them may seem just; and their agreement in the premises, in writing, signed and sealed by the said commissioners of both states, or a majority of them, respectively, if made on or before the first Tuesday of January next, shall become binding on this State, when confirmed by the respective legislatures of New Jersey and New York and approved by Congress.

"Sec. 3. And be it enacted, That the said commissioners shall meet at such time and place as they may agree upon, and shall each be entitled to receive five dollars per day, for every day they may be employed in discharging their duties under this act, and fifteen cents per mile for every mile they shall necessarily travel in going to, and returning from, any meeting of the said commissioners, to be paid by the treasurer, on the warrant of the governor or person administering the government of this State.

"Sec. 4. And be it enacted, That the governor or person administering the government of this State, shall transmit to the governor of the State of New York a copy of this act.

Passed February 6, 1833." Laws of N. J., 1833, p. 54.

EXHIBIT C 82.

Pamphlet Laws of New York for 1834, Page 8.

"An Act to Confirm the Agreement Entered into by the Commissioners Appointed by this State and Commissioners Appointed by the State of New Jersey to Settle the Boundary Line Between New York and New Jersey, Passed February 5, 1834.

The people of the State of New York represented in Senate and Assembly do enact as follows:

The agreement entered into between the commissioners appointed by this State and the commissioners appointed by the State
207 of New Jersey to settle the boundary line between New York and New Jersey, in words following, viz:

(Agreement in full, as in Revision of N. J., p. 1178,) is hereby ratified and confirmed on the part of the State of New York."

EXHIBIT C 83.

"An Act to Ratify and Confirm an Agreement made Between the Commissioners Appointed by the Governor of the State of New York, and the Commissioners Appointed by the Governor of the State of New Jersey, Respecting the Territorial Limits and Jurisdiction Between the Said States, Passed February 26, 1834.

"Whereas, commissioners duly appointed on the part of the state of New York, and commissioners duly appointed on the part of New Jersey, for the purpose of agreeing upon, and settling the jurisdiction and territorial limits of the two states, have executed certain articles, two copies for each state, which are contained in the following words:

"Agreement made and entered into, by and between Benjamin F. Butler, Peter Augustus Jay and Henry Seymour, commissioners duly appointed on the part and behalf of the state of New York, in pursuance of an act of the legislature of the said state, entitled 'An act concerning the territorial limits and jurisdiction of the state of New York, and the state of New Jersey,' passed January eighteen, eighteen hundred and thirty-three, of the one part, and Theodore Frelinghuysen, James Parker and Lucius Q. C. Elmer commissioners duly appointed on the part and behalf of the state of New Jersey, in pursuance of an act of the legislature of the said state, entitled 'An act for the settlement of the territorial limits and jurisdiction between the states of New Jersey and New York,' passed February sixth, eighteen hundred and thirty-three, of the other part.

"3. Art. I. The boundary line between the two states of New York and New Jersey, from a point in the middle of Hudson river, opposite the point on the west shore thereof, in the forty-first degree of north latitude, as heretofore ascertained and marked, to the main sea, shall be the middle of the said river, of the bay of New York, of the water between Staten Island and New Jersey, and of Raritan bay, to the main sea, except as hereinafter otherwise particularly mentioned.

208 "4. Art. II. The state of New York shall retain its present jurisdiction of and over Bedlow's and Ellis' islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that state.

"5. Art. III. The state of New York shall have and enjoy exclusive jurisdiction of and over all the waters of the bay of New York, and of and over all the waters of Hudson river, lying west of Manhattan Island, and to the south of the mouth of Spuytenduyvel creek, and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and jurisdiction of the state of New Jersey, that is to say:

"(1). The state of New Jersey shall have the exclusive right of property in and to the land under water, lying west of the middle of the bay of New York, and west of the middle of that part of the Hudson river which lies between Manhattan Island and New Jersey.

"(2). The state of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of the said state, and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the state of New York, which now exist or which may hereafter be passed.

"(3). The state of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of said waters; provided, that the navigation be not obstructed or hindered.

"6. Art. IV. The state of New York shall have exclusive jurisdiction of and over the waters of the Kill von Kull, between Staten Island and New Jersey, to the westermost end of Shooter's island, in respect to such quarantine laws and laws relating to passengers as now exist, or may hereafter be passed under the authority of that State, and for executing the same; and the said State shall also have exclusive jurisdiction, for the like purposes, of and over the waters of the sound from the westermost end of Shooter's Island to Woodbridge creek, as to all vessels bound to any port in the said State of New York.

"7. Art. V. The State of New Jersey shall have and enjoy exclusive jurisdiction of and over all the waters of the sound between Staten Island and New Jersey, lying south of Woodbridge
209 creek, and of and over all the waters of Raritan bay, lying westward of a line drawn from the lighthouse at Prince's bay

to the mouth of Matawan creek, subject to the following rights of property and jurisdiction of the state of New York, that is to say:

"(1). The State of New York shall have the exclusive right of property in and to the land under water lying between the middle of the said waters and Staten Island.

"(2). The State of New York shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of Staten Island, and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws and laws in relation to passengers of the State of New Jersey, which now exist or which may hereafter be passed.

"(3). The State of New York shall have the exclusive right of regulating the fisheries between the shore of Staten Island and the middle of the said waters; provided, that the navigation of the said waters be not obstructed or hindered.

"8. Ar. VI. Criminal process issued under the authority of the State of New Jersey against any person accused of an offense committed within that State, or on board of any vessel being under the exclusive jurisdiction of that State, as aforesaid, or committed against the regulations made or to be made by that State, in relation to the fisheries mentioned in the third article; and also civil process issued under the authority of the State of New Jersey against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the State of New York, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the State of New York, or fastened to a wharf adjoining thereto; or unless such person shall be under arrest, or such property shall be under seizure, by virtue of process or authority of the State of New York.

"9. Art. VII. Criminal process issued under the authority of the State of New York against any person accused of an offense committed within that State, or committed on board of any vessel being under the exclusive jurisdiction of that State as aforesaid, or committed against the regulations made or to be made by that State in relation to the fisheries mentioned in the fifth article; and also civil process issued under the authority of the State of New York against any person domiciled in that State, or against property taken out of that State to evade the laws thereof, may be served upon any of the said waters within the exclusive jurisdiction of the state of New Jersey, unless such person or property shall be on board a vessel aground upon or fastened to the shore of the state of New Jersey, or fastened to a wharf adjoining thereto, or unless such person shall be under arrest, or such property shall be under seizure by virtue of process or authority of the state of New Jersey.

"10. Art. VIII. This agreement shall become binding on the two states when confirmed by the legislatures thereof, respectively, and when approved by the Congress of the United States.

"Done in four parts (two of which are retained by the commissioners of New York, to be delivered to the governor of that state,

and the other two of which are retained by the commissioners of New Jersey, to be delivered to the governor of that state) at the city of New York, this sixteenth day of September, in the year of our Lord one thousand eight hundred and thirty-three, and of the Independence of the United States the fifty-eighth.

B. F. BUTLER.
PETER AUGUSTUS JAY.
HENRY SEYMOUR.
THEODORE FRELINGHUYSEN.
JAMES PARKER.
LUCIUS Q. C. ELMER.

"Therefore—That the aforesaid agreement, and every article, clause, matter, and thing therein contained, shall be and the same is hereby fully and amply ratified and confirmed on the part of the state of New Jersey."

Confirmed by New York, February 5, 1834.

Approved by the Congress of the United States, June 28, 1834.

Rev. of N. J., 1877, p. 1178.

EXHIBIT C 84.

Also C —

June 28, 1834. "Chap. CXXVI. An Act Giving the Consent of Congress to an Agreement or Compact Entered into Between the State of New York and the State of New Jersey, Respecting the Territorial Limits and Jurisdiction of said States.

Whereas commissioners duly appointed on the part of the State of New York and commissioners duly appointed on the part
211 of the State of New Jersey for the purpose of agreeing upon and settling the jurisdiction and territorial limits of the two States, have executed certain articles which are contained in the words following, viz:

(Agreement in full, as in Revision of N. J., p. 1178.)

And Whereas the said agreement has been confirmed by the Legislatures of the said States of New York and New Jersey respectively, therefore:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of the Congress of the United States is hereby given to the said agreement, and to each and every part and article thereof, Provided, That nothing therein contained shall be construed to impair or affect the right of jurisdiction of the United States in and over the islands or waters which form the subject of the said agreement.

Approved June 28, 1834."

U. S. Statutes at Large, vol. 4, p. 808.

Exhibit C 85.

"An Act to Create the County of Hudson."

"Whereas, the inhabitants of the township of Bergen and Lodi, of Jersey City, and the villages of North Bergen, Harsimus, Hoboken, West Hoboken, Weehawken, New Durham, Secaucus, and Greenville, respectively, have by their petitions set forth, that by reason of the great increase of business from year to year, calling for the attendance of parties, jurors, and witnesses, at distances varying from twelve to twenty miles, and the proximity of the city of New York requiring the exercise of a rigid police, they are at an inconvenient distance from the county town, and the courts of justice, and have prayed that a new county should be erected. Therefore,

Sec. 1. Be it enacted by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same, That all that part of the county of Bergen, as the same stood before the passing of this act, contained within the following boundaries, viz: beginning at the north easterly corner of the present township of Bergen, in the boundary line between this state and the state of New York; thence running westwardly on the line which
212 divides the said township of Bergen from the township of Hackensack, to the Hackensack river; thence down the middle of the said Hackensack river, to the middle of the turnpike road of the New Barbadoes Toll-Bridge Company; thence westwardly along the middle of the said turnpike road, in the various courses thereof, to the middle of the abutment of the bridge across the Passaic, opposite to the village of Acquackononck; thence, along the middle of said bridge to the point where it meets the line between the present county of Passaic and Bergen; thence, down the said Passaic river and Newark bay, in the several courses thereof, on the boundary lines between the county of Bergen, as the same stood before the passing of this act, and the counties of Passaic and Essex, to Kill-Van-Kull; thence, eastwardly, on the boundary line between this state and the state of New York, to the Hudson river; thence, northwardly, continuing on the said boundary line between this state and the state of New York, up the Hudson river to the place of beginning, be and the same is hereby erected into a separate county, to be called the county of Hudson; and said lines shall hereafter be the division lines between the counties of Essex, Passaic, and Bergen, and the state of New York, and the said county of Hudson, respectively."

Passed February 22, 1840, Rev. of N. J., 1877, p. 205.

EXHIBIT C 86.

"An Act to Incorporate the City of Perth Amboy."

Passed February 27, 1844, P. L. of N. J., 1844, p. 122.

EXHIBIT C 87.

"An Act to Incorporate the Town of Bergen."

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That all that part of the county of Hudson which now constitutes the township of Bergen, be and the same is hereby formed into a town corporate, to be designated and known in law as 'The Town of Bergen,' and all the citizens of this State who are now, or hereafter may be, inhabitants within said limits,
213 shall be and they are hereby constituted a body politic and corporate in law, by the name of 'The Town of Bergen,' instead of as heretofore by the name of 'The Inhabitants of the Township of Bergen, in the County of Hudson'; and they shall have all the rights and privileges of any township of this State, not hereby expressly abrogated, altered or avoided, and they shall have all the powers of a municipal corporation necessary for carrying out the objects of this act; and for general purposes not provided for by this act, the said 'The Town of Bergen' shall be considered a township."

Approved March 11, 1862, Laws of N. J., 1862, p. 162.

EXHIBIT C 88.

"An Act to Create from the Town of Bergen, in the County of Hudson, a New Township, to Be Called the Township of Greenville."

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That so much of the act entitled 'An act to incorporate the town of Bergen, approved March eleventh, eighteen hundred and sixty-two, as applies or was intended to apply, to all that southwestern part or portion of the township of Bergen, as it existed immediately previous to the passage of said act, and comprised, or nearly so, within the limits of what is known as Washington school district, number three, bounded on the southeast by New York harbor, on the west by the Morris canal and lands of James Currie, Esq., on the northeast by Newark bay and the Hackensack river, on the northeast by a road or lane known as Myrtle avenue, with a continued line running southeasterly from said avenue to New York harbor, and northwesterly from said avenue to the Hackensack river; this last boundary being the unadjusted dividing line between the 'town of Bergen' and the township hereinafter incorporated,) be and the same is hereby repealed.

"2. And be it enacted, That all that part or portion of the late

township of Bergen, now 'town of Bergen,' Hudson County, and embraced within the limits as described and bounded in section first of this act, be and the same is hereby created into a township to be designated and known in law as the inhabitants of the township of Greenville; and the inhabitants of the said township of
214 Greenville are hereby constituted a body politic and corporate in law, and shall be entitled to all the rights, powers, authority and privileges, and subject to the same laws as were the inhabitants of the township of Bergen previous to the passage of the act incorporating the 'town of Bergen,' and all other existing laws of the state not conflicting with this act."

Approved March 18, 1863, Laws of N. J., 1863, p. 306.

EXHIBIT C 89.

"An Act to Incorporate the City of Bergen."

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That the city of Bergen shall hereafter consist of all the territory included within the following boundaries, that is to say: Beginning at the most westerly corner of the city of Hudson, in the county of Hudson, where the New Jersey railroad crosses the Hackensack river; thence easterly along the centre line of the New Jersey railroad its several courses to the centre of Mill Creek; thence southerly along the centre of Mill Creek its several courses into New York bay, until it intersects the boundary line of the state of New York; thence southerly along said boundary line of the state of New York until it intersects the dividing line between the township of Greenville and the city of Bergen; thence westerly along said line to the middle of the Hackensack river; thence northerly along the middle of the Hackensack river its several courses to the place of beginning, comprising the same territory heretofore known and incorporated as 'The Town of Bergen,' and the same is hereby formed into a city corporate, to be designated and known in law as 'The City of Bergen.'"

Approved March 11, 1868, Laws of N. J., 1868, p. 314.

EXHIBIT C 90.

"An Act to Reorganize the Local Government of Jersey City.

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That Jersey City shall hereafter consist of the territory comprised within the following boundaries, to wit:
215 beginning in the middle of the Hudson river, at a point bearing south sixty degrees east from the southwest corner of block number seventy-six, as shown on the map of property of Cornelius Van Vorst; thence running northerly up the middle of the Hudson river to a point bearing south sixty degrees east from

the northerly mouth of Harsimus or Mill creek; thence north sixty degrees west to the said Mill creek; thence up the middle of the said creek to the first branch thereof; thence in a northwesterly direction to the Hoboken embankment; thence southwesterly along the southerly side of said embankment to the easterly boundary line of Hudson City; thence northerly along said boundary line to a point opposite the centre of Tenth street, in the city of Hoboken; thence westerly in a direct line to the centre of the Paterson and New York plank road; thence along the centre of said plank road to the centre of Paterson avenue; thence northwesterly along the centre of said avenue to the centre of Secaucus road; thence northerly along the centre of said road to the middle of Penhorn creek; thence southerly along the centre of Penhorn creek to the centre of Hackensack river; thence along the centre of the Hackensack river southerly, its several courses, to the present boundary line between Jersey City and Greenville; thence easterly along said boundary line to the shore of New York bay; thence along said shore to the line which, before the passage of this act, divided Jersey City from Greenville; thence along said last mentioned line, its several courses, to a point in New York bay where the centre line of the Hudson river produced southerly would intersect the same; thence northerly and along the centre line of the Hudson river to the place of beginning."

Passed March 31, 1871, Laws of N. J., 1871, p. 1094.

Exhibit C 91.

"A Supplement to an Act Entitled 'An Act to Reorganize the Local Government of Jersey City,' Passed March Thirty-first, one Thousand Eight Hundred and Seventy-one."

"Whereas, at a public election held in the township of Greenville, in the county of Hudson, on the tenth day of December, anno domini one thousand eight hundred and seventy-two, the inhabitants of said township did, by a vote of two hundred and
216 ninety-one in favor of consolidation, to fifty-five against it, express their desire to be consolidated with Jersey City; and whereas, it is reasonable and proper that the popular will so expressed should be complied with, therefore,

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, That Jersey City shall hereafter consist of not only the territory hitherto comprised within its limits, but also the territory now comprised within the limits of the said township of Greenville.

"2. And be it enacted, That all persons resident within the said limits of Jersey City and of Greenville, as hitherto existing, shall hereafter constitute a body politic and corporate, known as 'The Mayor and Aldermen of Jersey City.'"

Approved February 4, 1873, Laws of N. J., 1873, p. 203.

Exhibit C 92.

"An Act to Consolidate Into One Act and to Declare the Special and Local Laws Affecting Public Interests in the City of New York.

Passed July 1, 1882, three-fifths being present.

"The People of the State of New York, represented in Senate and Assembly do enact as follows:

City and County Boundaries.

"Section 1. The city and county of New York shall contain the islands called Manhattan Island, North Brother's Island, Great Barn or Ward's Island, Little Barn or Randall's Island, Manning's or Blackwell's Island, Nutten or Governor's Island, Bedloe's Island, Bucking or Ellis Island, and the Oyster Islands; and also all the territory which formerly constituted the towns of Morrisania, West Farms and Kingsbridge, in the county of Westchester, being all in the territory which lies westerly of the centre of the Bronx River, and southerly of a line commencing in the centre of the Bronx river, at latitude forty degrees, fifty-three minutes, fifty-nine and twenty-three one hundredths seconds north, and longitude seventy-three degrees, fifty-one minutes, thirty-five and sixty-seven one hundredths seconds west of Greenwich, and running on a straight
217 line westerly to a point on the low-water mark of the eastern bank of the Hudson river at latitude forty degrees, fifty-four minutes, fifty-three and twenty-one one-hundredths seconds north, and longitude seventy-three degrees, fifty-four minutes, thirty-eight and sixty-four one hundredths seconds west of Greenwich, and thence westerly in a straight line to the west bounds of the state; together with all the land under water within the following bounds: beginning at Spuyten-Duyvil creek, where the water mark of the northern bank thereof intersects the low water mark on the eastern bank of the Hudson River, and running thence along said creek at low water mark on the northern side thereof to the Harlem river; thence along the low water mark on the eastern bank thereof to the Bronx kills; thence along the low water mark on the northern bank thereof to the low water mark on the north-western shore of Long Island Sound, thence along the low water mark of the north-western and northern shore of Long Island Sound to the mouth of the Bronx river at Hunt's point; thence along the low water mark as far as the same may extend in the Bronx river, and the mouth thereof to the low water mark of Long Island Sound at the western side of Clauson's Point; thence across Long Island Sound to College Point on Nassau or Long Island to low water mark there; thence southwesterly across Flushing bay to low water mark at Sandford's Point, between Flushing and Bowery bays, including Great Barn or Ward's Island, and Little Barn or Randall's Island; then along Nassau or Long Island shore, at low water mark, and including

Manning's or Blackwell's Island, to the south side of Red Hook, then across the North river so as to include Nutten or Governor's Island, Bedloe's Island, Bucking or Ellis Island, and the Oyster Islands, to the west bounds of the State; and thence northerly along the west bounds of the State to the junction with the above-mentioned prolongation westerly of the northern boundary line of the city and county of New York; from the low water mark on the eastern bank of the Hudson river; thence easterly along said line to the easterly bank of the Hudson River at low water mark; thence southerly along said easterly bank, at low water mark, to the point or place of beginning.

* * * * * * *

First Ward.

The first ward shall begin in the middle of Broadway at a point where it is intersected by the middle of Liberty street, and run from the said point of intersection, through the middle of Liberty
218 street, southeasterly, to the middle of Maiden lane; then down the middle of Maiden lane, and from thence in a straight line running in the same direction across the East river, to low water mark on Nassau or Long Island; and thence along Nassau or Long Island shore, at low water mark, to the south side of Red Hook; and then across Hudson River, so as to include Nutten or Governor's Island, Bedloe's Island, Bucking or Ellis Island and the Oyster Islands, and all the waters of this State in the Bay of New York, and to the southward thereof, and which are not comprehended in any other county, to low water mark on the west side of Hudson river, or so far as the bounds of this State extend; then up along the West side of Hudson river, at low water mark, or along the limits of this State, to a place due west from the middle of the west end of Liberty street; then to the middle of Liberty street; then through the middle of Liberty street to the middle of Broadway, at the place of beginning.

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Third Ward.

Sec. 4. The third ward shall begin on the west side of Hudson river, at the northwesterly corner of the first ward and running thence due east to the middle of Liberty street; then through the middle of Liberty street to the middle of Broadway; then through the middle of Broadway to a point opposite to the middle of Reade street; then through the middle of Reade street, in a line running in the same direction across Hudson river, to low water mark on the west side thereof, or so far as the bounds of the State extend; then down the west side of Hudson river, at low water mark, or along the limits of this State, to the place of beginning.

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Fifth Ward.

Sec. 6. The fifth ward shall begin at the northwesterly corner of the third ward, and run thence along the northerly bounds thereof, to the middle of Broadway; then through the middle of Broadway to the middle of Canal street; then through the middle of Canal street to Hudson river; then due west to low water mark, on the west side of Hudson river, or so far as the bounds of this State extend; then down along the west side of Hudson river, at low-water mark, or along the limits of this State to the place of beginning.

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Eighth Ward.

Sec. 9. The eighth ward shall begin at the northwesterly corner of the fifth ward, and run thence along the northerly bounds
219 of the said ward through Canal street to the middle of Broadway; then through the middle of Broadway to a point opposite to the middle of Houston street; then through the middle of Houston street to a point opposite to the middle of West Houston street; then through the middle of West Houston street to Hudson river; then due west to low-water mark, on the west side of Hudson river, or so far as the limits of this State extend; then down along the west side of Hudson river, at low-water mark, or along the limits of this State, to the place of beginning.

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Ninth Ward.

Sec. 10. The ninth ward shall begin at the northwesterly corner of the eighth ward, and run thence along the northerly bounds of the said ward through the middle of West Houston street to the middle of Hancock street; thence northerly through the middle of Hancock street to the middle of Bleecker street; thence northwesterly through the middle of Bleecker street to the middle of Carmine street; thence nor-easterly through the middle of Carmine street to the middle of Sixth avenue; thence northerly through the middle of Sixth avenue to the middle of West Fourteenth street; thence westerly through the middle of West Fourteenth street to Hudson river; then due west to low-water mark on the west side of Hudson river; or so far as the limits of this State extend; then down along the west side of Hudson river, at low-water mark, or along the limits of this State, to the place of beginning.

* * * * * * *

Sixteenth Ward.

Sec. 17. The sixteenth ward shall begin at the northwesterly corner of the fifteenth ward, at a point in the middle of Fourteenth street where the middle of Sixth avenue intersects the middle of Fourteenth street, and run thence along the middle of Fourteenth street to Hudson river; thence westerly and along the northerly boundary of the ninth ward to low-water mark on the west side of

the Hudson river, or so far as the limits of this state extend; thence northerly along the west side of Hudson river, at low water mark or along the limits of this state, to a point opposite the middle of the westerly end of Twenty-sixth street; thence in a direct line across Hudson river through the middle of Twenty-sixth street to the middle of Sixth avenue, and thence southerly along the middle of Sixth avenue to the place of beginning.

* * * * * * *

220 Twentieth Ward.

Sec. 21. The twentieth ward shall begin at a point formed by the intersection of the middle of Twenty-sixth street with the middle of Sixth avenue, and run thence westerly along the middle of Twenty-sixth street to Hudson river; thence westerly along the northerly boundary of the sixteenth ward to low-water mark on the west side of Hudson river, or so far as the limits of the state extend; thence northerly along the west side of Hudson river, at low-water mark, or along the limits of this state, to a point opposite the middle of the westerly end of Fortieth street; thence in a direct line across Hudson river, through the middle of Fortieth street to the middle of Sixth avenue, and thence southerly along the middle of Sixth avenue to the place of beginning.

* * * * * * *

Twenty-second Ward.

Sec. 23. The twenty-second ward shall begin at a point formed by the intersection of the middle of Fortieth street with the middle of Sixth avenue, and run thence westerly along the middle of Fortieth street to Hudson river; thence westerly along the northerly boundary of the twentieth ward to low-water mark on the west side of Hudson river, or so far as the limits of the state extend; thence northerly along the west side of Hudson river, at low-water mark, or along the limits of this state, to a point opposite the middle of the westerly end of Eighty-sixth street; thence in a direct line across Hudson river, through the middle of Eighty-sixth street, to the middle of Sixth avenue; and thence southerly along the middle of Sixth avenue to the place of beginning."

N. Y. Consolidation Act, 1891, p. 1.

EXHIBIT C 93.

"An Act Making Appropropations for the Construction, Repair, and Preservation of Certain Public Works on Rivers and Harbors, and for Other Purposes.

"Sec. 12. Where it is manifest to the Secretary of War that the establishment of harbor lines is essential to the preservation and protection of harbors, he may, and is hereby authorized to cause
221 such lines to be established, beyond which no piers or wharves shall be extended or deposits made except under such regulations as may be prescribed from time to time by him."

Passed August 11, 1888.

U. S. Statutes at Large, vol. 25, pp. 400, 425.

Exhibit D 1.

Chapter 69 of the Laws of 1887 of New York.

An Act for the Settlement of Territorial Disputes in Regard to the Lands under Water in Raritan Bay.

Section 1. The Governor shall appoint three Commissioners, who shall have full power, on the part of the State of New York, to meet the Commissioners appointed, or to be appointed by the State of New Jersey, and with them locate and mark out by proper monuments and buoys the true boundary line between the two States in lands under water in Raritan Bay.

Section 2. The said Commissioners, within one year from the passage of this act, shall file with the Secretary of the State of New York a map showing such boundary line.

Section 3. The expenses of the said Commissioners, not exceeding one thousand dollars, shall be paid by the treasurer upon the warrant of the Comptroller, after first being approved by the Governor.

This Act shall take effect immediately.

Exhibit D 2.

Chapter 159 of Laws of 1888 of New York.

An Act to Extend the Powers and Jurisdiction of the Commissioners Appointed for the Settlement of Territorial Disputes in Regard to the Lands under Water in Raritan Bay.

Section 1. The Commissioners heretofore appointed pursuant to the provisions of Chapter Sixty-nine of the Laws of Eighteen Hundred and Eighty-seven entitled "An Act for the settlement of territorial disputes in regard to the lands under water in Raritan Bay," are hereby empowered to meet the Commissioners appointed
222 on the part of the State of New Jersey, and with them, locate and mark out by proper monuments and buoys the true boundary line between New York and New Jersey, in New York Bay, Kill Von Kill and Arthur Kill or Staten Island sounds.

Section 2. The said Commissioners within one year from the passage of this Act shall file with the Secretary of State a map showing such boundary line.

Section 3. The expenses of said Commissioners shall be paid by the treasurer on warrant of the Comptroller, after first being approved by the Governor.

Section 4. The sum of three thousand dollars or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated for carrying out the provisions of this act.

This act shall take effect immediately.

EXHIBIT D 3.

Chapter 212 of the Laws of New York.

An A-t to Amend Chapter 159 of Laws of 1889.

Section 1. Section one of chapter 159 of the laws of 1889 entitled "An act to extend the powers and jurisdiction of the Commissioners appointed for the settlement of territorial disputes in regard to the lands under water in Raritan Bay," is hereby amended as follows:—

1. The Commissioners hereto appointed pursuant *of* the provisions of chapter sixty-nine of the laws of Eighteen hundred and eighty-seven entitled "An Act for the settlement of territorial disputes in regard to the lands under water in Raritan Bay, are hereby empowered to meet the Commissioners appointed on the part of the State of New Jersey, and with them locate and mark out by proper monuments and buoys the true boundary line between New York and New Jersey, in New York bay, Kill von Kull, Arthur Kill or Staten Island sounds and the Hudson River.

This act shall take effect immediately.

223 EXHIBIT D 4.

Opinion of Court of Appeals in N. Y. vs. Central R. R. of N. J., 42 N. Y. Ct. of Ap. R., 283.

POTTER, *Justice:*

Three causes of demurrer are assigned by the defendants:

First. "Want of Jurisdiction of the person of the defendant."

Second. "Want of jurisdiction of the subject of the action."

Third. "That the complaint does not state facts sufficient to constitute a cause of action."

In the view I have taken of this case, it is quite difficult to examine these causes separately; they will, therefore, be substantially discussed together.

One principal point in the first cause of demurrer, if taken alone, even if good, does not reach the entire merits of the question, which both parties are desirous of having considered. It involves but a question of practice as to the bringing a foreign corporation into Court, and rests so much in the obscurity of doubt, that, for the present, I have passed it by to consider the more important questions raised by the other causes of demurrer assigned—and, first, that of jurisdiction by this Court of the cause of the action.

The objection raised by this point is, not that a Court of Equity has not jurisdiction of an action of the nature of that set forth in the complaint, but that it has no jurisdiction of the particular subject therein complained of—that the Court has no power to make or enforce any decree in relation to the locus in quo.

Though this case is nominally a case between the State of New

York and a foreign corporation, its importance can only be appreciated when it is seen that, practically, a Court of Equity of one State is called upon, and is in effect required to settle the disputed question of the boundary line between two sovereign States—one of them being the State in which, only, such Court of Equity can exercise jurisdiction, the other State not being a party to the action.

This, it is obvious, is calling upon the Court to perform a duty of great delicacy. It is called upon to declare the law, which, if established, is to be the law for each State as against the other.

224 It is a duty which, upon the first reflection, common propriety would seem to dictate should be performed by a Court having equal jurisdiction over both States, and where both should be made parties, by a Court in which each of the States should have equal confidence, and from whose decision either State could directly appeal from the judgment to be rendered, and in which both parties could have all the advantage of the local laws of the State in which the action should be pending. This, I think, cannot be done in this cause.

By our Code of Practice, Section 122, it is provided, that the Court may determine any controversy between the parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a complete determination of the controversy cannot be had without the presence of other parties, the Court must cause them to be brought in. The demurrer in this case calls for the adjudication of legal and substantial rights and interests between parties, one of whom cannot be brought into this Court as a defendant, though the nominal defendant may be properly here. Before this Court can determine whether it has jurisdiction to act at all, it must actually give construction to an Act of Congress, involving the provisions of a treaty between the States of New York and New Jersey in regard to the boundary line between those States; and in the absence of New Jersey as a party, the court must adjudge and determine the locus in quo to be within the territory and jurisdiction of the State of New York, so that in effect it must decide against New Jersey before it can proceed to give judgment in favor of the plaintiff.

There seems, therefore, to be a legal impropriety in having one of two contending parties judicially to determine its rights as against the other.

It is a well known maxim or principle given for the interpretation of deeds and treaties "that neither the one -or the other of the parties interested has a right to interpret it according to his own fancy." Vattel Max., 3 B., 2 Chap. 17. Nor can the Court cause the State of New Jersey to be brought in as a party in pursuance of the provisions of Sec. 122 of the Code above cited, for the reason that an order so to bring in that State as a party, and the bringing it in accordingly would deprive this Court, by virtue of that very

225 order, of jurisdiction to decide the case at all; it having no jurisdiction to hear or decide an action between sovereign States. U. S. Cons. Art. 3, Sec. 2. So it will be seen that the State of New Jersey cannot be allowed the benefit of this provision of our

Statute, a right allowed to all other suitors, viz: that of being brought in as a party. And though it may appear to this Court that the locus in quo is within the State of New York, still its judgment must be, "by saving the rights of the State of New Jersey." Code, Sec. 122. And should the Court give its decision as the right appears to *them*, and be in error in this regard, its judgment, if attempted to be carried out, would be ineffective and might bring a conflict between the authorities of the two States.

In such case, resort must still be had to the Federal Courts to settle the question. The rights of the State of New Jersey cannot be prejudiced by an adjudication of this court.

This case to be decided is strikingly analogous to that of an action brought by the claimants to the title of lands or real estate against the tenants or occupiers of such estate, holding the same under another and a conflicting claim of title, for injuries done to the reversion by such tenants without having joined their landlord as a party to the action; and where, upon the face of the complaint it clearly appears that the title of the landlord of such tenants is directly involved and must be decided as a matter of law. The Court, in such case, would order the landlord of the tenants to be brought in as a party.

If the case was reversed, and the defendants had brought their action in this Court, against individuals in this State for any injury or disturbance to their structures, the Attorney-General, as representing the State of New York, would have been a necessary party. Davis vs. The Mayor of New York, 2 Duer, 663, S. C. 3 Duer, 121, 157, et sequiter. Shaver vs. Brainard, 29 Barb., 25. And this is the rule, even though the defendants may be non-residents. Sturtevant vs. Brewer, 17 How., Pr. R., 571. 4 Paige, R., 75-6-7. 1 Peters R., 149.

I think, therefore, that a complete determination of the controversy cannot be had without the presence of the State of New Jersey as a party. This appears from the provisions of the treaty which we are called to pass upon.

The complaint charges, among other things, that the defendants have been and are erecting structures that interfere with the navigation of the Bay of New York and Hudson River, and ask relief against this act. We may take judicial notice, I think, that
226 the waters of this bay and river at the place complained of, are navigable waters in the maritime sense of that term; if so, this would seem to make it a question affecting commerce, the power to regulate which is conferred upon Congress; and though Congress has passed no act in execution of this power to regulate commerce between the several States, still the action could have been brought in the Federal Courts, and New Jersey, as a body politic, could then have been brought into a Court, where her rights, under this treaty, could have been adjudged. It is true, that there are other matters of injury alleged in the complaint to have been done against the plaintiff, as to which no doubt a Court of Equity can properly take cognizance, such as an encroachment upon jurisdictional rights, and the commission of a nuisance thereon: but these injuries are mingled

with charges which appear to me to be more properly within the province of Federal Courts and within their jurisdiction to determine; that the duty of severing such injuries set forth in the same complaint from those that are not so within the jurisdiction of the State Courts; and of affording a proper remedy thereon, is exceedingly embarrassing, if not practically impossible. The whole character of the injuries complained of is most clearly that the whole question comes peculiarly within the legitimate sphere of that tribunal, which is clothed by the Federal Constitution, (and by the consent of the States whose rights are thus brought in question) with authority fully to hear and determine the controversy and to whose determination each State would yield cheerful obedience.

Even though it may appear that for some of the causes set forth, a State Court of Equity might entertain jurisdiction, it would have been more eminently proper that an action of this nature should have been brought to the Federal Courts. But suppose we are in error in the views we have above expressed; we are then called upon to give judicial construction to the provisions of the treaty made by the commissioners on the parts respectively of the States of New York and New Jersey, ratified by these States respectively, and by an Act of Congress. If, upon an examination of the several articles and provisions of the treaty the locus in quo is found to be in the State of New York or within the jurisdiction given to its Courts, then it is conceded this Court can take cognizance of the complaint, otherwise we have no jurisdiction of the subject of the action, and in the latter view the complaint will have failed to state facts sufficient to constitute a cause of action. From the preamble to the
227 treaty which is contained in the Act of Congress its purpose is therein expressed to be that "of agreeing upon and settling the jurisdiction and territorial limits of the two States." The preamble to the Act of this State is expressed to be "an agreement relative to the boundary line between the two States." (Act of February 5th, 1834.) Its object, therefore, is plain, and clearly expressed.

By the various provisions of the treaty, it is obvious that "boundary line" and "jurisdiction" are terms not intended to be identical in their meaning; and while the line which fixes the boundary between the two States, with an exception, is unquestionable, and is not controverted by the parties, "jurisdiction" a word of mere questionable meaning in this treaty, is clearly not limited in its construction to the boundary line; and that it is qualified in its meaning according to its application to different objects mentioned in the treaty. Except for such qualifications in the meaning, use of and application of the term "jurisdiction," the fixing of the boundary line between the States, would of itself control the meaning and effect of the term "jurisdiction."

The territorial limits of a States, as a natural and legal consequence, would limit its jurisdiction; but jurisdiction for certain purposes is granted to New York, over territory within the State of New Jersey, and jurisdiction to the State of New Jersey, is in like manner

and for certain purposes granted over territory belonging to the State of New York.

In other instances both States have a kind of jurisdiction, though for different purposes not in conflict, over the same territory. The boundary line of a State is, and must be, a fixed, unchanging line, while jurisdiction for special purposes may be extended and changing.

From this statement it is seen that "jurisdiction" as used in this treaty, is intended to be a qualified term of greater or less power, the extent or limit of which—its several meanings—is supposed to be the real difficulty that arises upon this point of the case.

This will be the more obvious as we proceed to examine the several articles of the treaty in their order, which are as follows:

Article First. The boundary line between the two States of New York and New Jersey, from a point in the middle of the Hudson River, opposite the point on the west shore, thereof, in the forty-first degree north latitude as heretofore ascertained, and marked to the main sea; shall be the middle of the said river—of the bay of
228 New York—of the waters between Staten Island and New Jersey and of Raritan bay, to the main sea; except as hereinafter otherwise particularly mentioned. Omitting for the present an examination of the words in this article ("except as hereinafter otherwise particularly mentioned,") it must be conceded that by the force of this article the structures complained of are within the territorial limits of the State of New Jersey. They are easterly of this established dividing line between the States. The sovereign and unqualified proprietorship of the locus in quo, therefore is ex vi termini in New Jersey.

How then do the Courts of the State of New York acquire jurisdiction to adjudicate, and how are its judgments to be enforced within the territory of another sovereign State?

If this first article stood alone—if the power and effect which its positive language confers is not destroyed or taken away by other provisions of the treaty, it is clear that the sovereign power, including full jurisdiction of the locus in quo, is in the State of New Jersey, and that such power and jurisdiction is exclusive and unqualified. I need not cite authority to sustain a proposition so elementary, nor to prove that such jurisdiction extends to lands under water, in the sea, and in navigable rivers. Nor will the primary and fundamental maxims of international jurisprudence be controverted, that within the territorial limits of a State its own authority is supreme and exclusive of every other State, and that such State possesses the exclusive authority to regulate the manner of holding and using property, personal as well as real, within its own territorial limits; and the power must follow to determine and administer the remedies and modes of redress for any use or appropriation of real estate which is not warranted by its own laws, and also to sustain and uphold where its own laws give their sanction.

And this absolute proprietorship includes the right to build, or permit to be built, docks, wharves and piers and indeed, to make, or permit to be made, the very structure complained of, subject to the

power of the Federal Government and its Courts to restrain encroachment upon, or unjust interferences with the rights of navigation and commerce.

The plaintiff claims that jurisdiction is conferred over the locus in quo to the State of New York, and to her Courts by virtue of the provisions of the third article of this treaty. It may be well, however, to introduce the articles of this treaty in their order.

The second is as follows:

229 "Article second: The State of New York shall retain its present jurisdiction of and over Bedloes and Ellis Islands, and shall also retain exclusive jurisdiction of and over the other islands lying in the waters above mentioned, and now under the jurisdiction of that State."

It may be well as we proceed, and at this point, to explain the meaning of the words at the conclusion of the first article,—"except as hereinafter otherwise particularly mentioned." These words are explained to my mind by the language of the second article, and by other matters of which we can take judicial notice. Previous to this treaty, the boundary line of the State of New York as laid down in the Revised Statutes of this State, of 1830, Chap. 1, vol. 1, Section 1, pages 62 and 65, made the line as between New York and New Jersey, to run "in such a manner as to include Staten Island and the " islands of Meadow on the west side thereof, Shooters Island, Long " Island, the Isle of Wight, now called Gardiners Island, Fishers " Island, Shelter Island, Plumb Island, Robins Island, Ram Island, " the Gull Islands, and all the islands and waters in the Bay of New " York and within the bounds above described."

This description included Bedloes and Ellis Islands in New York, and New York had always claimed title to these islands, and had always exercised jurisdiction over them, and had claimed them to be within her territory; and these, together with Governors Island, had been actually ceded by the State of New York, before that time, to the United States, by an Act passed April 15th, 1800, giving the latter jurisdiction over them. So that when the treaty line in question was agreed upon, it cast Bedloes and Ellis Islands upon the New Jersey side of this treaty line, and, consequently, it was necessary to have them excepted. In order to save New York the benefits of her former claims thereto, the language of this second article was, doubtless, regarded as appropriate and as a compromise of that question, each party being willing to leave the question of sovereignty and actual proprietorship unexpressed, and leave the jurisdiction of the United States undisturbed. The then present jurisdiction of New York over them was reserved, granted or conceded by the one party and accepted by the other, and such agreement was well expressed in this second article.

230 And this explanation may be sufficient to reconcile and give effect to the language of exception at the end of the first article, and may well be held to mean, as its language clearly imports, that the boundary line so fixed shall be the boundary line of sovereign territory of proprietorship and all incident rights, "except as hereinafter otherwise particularly mentioned," to wit, in so far as

each party reserves to itself or concedes to the other certain subordinate rights in respect to navigation, to quarantine, to fishing, to docks and wharves, and to criminal police laws. This construction brings in to use the language of that exception contained in the first article for a reasonable and sensible purpose. It can only be otherwise used to confuse and create doubt as to its meaning.

The third article of this treaty, by which the plaintiff claims jurisdiction of the subject matter set forth in the complaint, is that which has received the most consideration upon the argument of this case, and is as follows:

"Third article: The State of New York shall have and enjoy exclusive jurisdiction of and over all the waters of Hudson River, lying west of Manhattan Island, and to the south of the mouth of Spuyten Duyvel Creek, and of and over the lands covered by the said waters, to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and of jurisdiction of the State of New Jersey, that is to say:

1st. The State of New Jersey shall have the exclusive right of property in and to the land under water lying west of the middle of the Bay of New York, and west of the middle of that part of Hudson River which lies between Manhattan Island and New Jersey.

2d. The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements, made and to be made on the shore of the said State, and of and over all vessels aground on said shore or fastened to any such wharf, or dock, (except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New York which now exist, or which may hereafter be passed).

231 3d. The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of the said waters; provided that the navigation be not obstructed or hindered."

I am free to confess to some little doubt as to the meaning, and of a construction that will reconcile all of the provisions of this article. The boundary line drawn in the language of the first article makes the lands westerly of that line within the absolute sovereign boundary, and as a consequence within the jurisdiction of New Jersey. Does the language of this article take that back, and make a new line to which the absolute and sovereign jurisdiction of New York extends, to wit: to low water mark on the New Jersey side? I think not. Though the terms "exclusive jurisdiction," are used in this article, it is expressly made, subject to the right of New Jersey to have "the exclusive right of property" west of the boundary line so drawn by the first article; so that it cannot be made to mean the absolute and sovereign right; it must be a right qualified and limited. If the distinguished and intelligent commissioners had intended to confer on the State of New York absolute sovereignty over this locus in quo, as it is to be presumed they understood the power of language, it would have been much more simple, artistic and clear to have drawn the description of the boundary line between the States in language that would have expressed the intent: that it should be

at low water mark, on the New Jersey side. This they did not do. But in terms they have given exclusive jurisdiction over and to the water, and land under water to the one State, and the exclusive right of property to another State, over the same territory. It is the category of predicament in which this case is thus placed, produced by the use of these terms, seemingly in conflict and as to which the parties claim different interpretations that calls for judicial aid.

I understand that the rules in part by which the Court must be governed in the performance of this duty of giving construction to the language of a treaty, or a statute (and this is both) is that in cases where doubt seems to arise from the language of one particular clause or section the whole treaty or statute should be read together, in order to ascertain its object and intent, and for this purpose we are to compare all the parts together and then, if possible, so to interpret as to prevent contradiction, or inconsistency; and also,
232 if practicable, so as to give effect to every clause, section, and part of it; and so as to reconcile the different provisions with each other as to make the whole consistent and harmonious. The manifest intent of the parties being the chief object; the preamble may be referred to to ascertain this intent.

Following these rules, we see that the Act of this State authorizing the appointment of Commissioners on the part of New York, (Laws of 1833, ch. 6,) was to "negotiate and agree respecting the territorial limits and jurisdiction of the State of New York and the State of New Jersey." The Act of the State of New Jersey for the same purpose has the same title. The preamble of the treaty, as we have stated, is "of agreeing upon and settling the jurisdiction and territorial limits of the two States," and the Act of ratification of the treaty by this State is entitled "the Act to confirm the agreement, &c." If but one of the terms "jurisdiction" or "boundary line" had been used, or if it appeared they were intended to be synonymous and identical, the interpretation might be easy, but as we have shown that they are not so, we must give to each term its appropriate meaning. There is no difficulty in determining where the political boundary line is between these two States. That line is clearly defined in the first article. On either side of that line these States are respectively the sovereign proprietors and owners, New York on the easterly and New Jersey on the westerly side thereof. But this line does not, by the terms of this treaty settle the jurisdiction, in all respects, between these States. New York has certain jurisdiction west of this line, and New Jersey has jurisdiction east of it.

To define the meaning of these jurisdictions, and what powers the States respectively possess by virtue of those terms, and what they respectively have parted with, is the main point in this case. By this third article "New York shall have and enjoy exclusive jurisdiction of and over the waters of the Bay of New York, and of and over all the waters of the Hudson River lying west of this line, and of and over the lands covered by said waters to low water mark on the New Jersey side." And by the same article New Jersey shall have the exclusive right of property in and to the lands under water up to the boundary line between the States as fixed by the first article. Here,

then is presented the case of the sovereign State of New Jersey, whose territorial line and proprietorship of the land is fixed and undoubted, yielding to the State of New York exclusive jurisdiction over the waters to a certain line, and to the land under waters to the
233 same line within her own boundary. Under these provisions of the treaty the State of New York brings an action, in her own Court of Equity, against a body corporate of the State of New Jersey, for an injury done within the territorial bounds of the State of New Jersey, upon lands, the proprietorship of which, by the treaty is conceded to New Jersey, a proceeding in rem, to abate a nuisance, claiming jurisdiction for her Court of Equity on the ground that it is a nuisance. This presents the whole legal view of this case.

It is conceded that if judgment be given according to the plaintiff's claim, the executive power which must be called into exercise to abate the nuisance must be exercised by some officer sent from the State of New York, and doubtless from the City and County of New York, in Which County the venue of the action is laid. In looking at the boundaries of the County of New York, (Rev. Stat., marg. page 2, page 130, 5 Ed.,) the locus in quo does not seem to be within that County. If I am not in error in this statement, (though all the maps I have consulted confirm this view) a judgment in favor of the plaintiff could not be executed by the Sheriff or other local officers of the County of New York, except by adopting the theory of the plaintiff that by the terms of the treaty the locus in quo is not only brought within the jurisdiction of the State of New York, and within the jurisdiction of her Courts, but also, that for this purpose it is within the limits of the County of New York; otherwise the territory is not within the legal limits of any one of her counties. By the 123d section of the Code such an action must be tried in the county in which the subject of the action, or some part thereof, is situated and, though this fact appearing may not be cause for demurrer, I do not see how the action can be tried within the county of New York, or its judgment be executed if given, unless this construction, as claimed by the plaintiff, be given to it. But suppose I am in error in these suggestions that the territory is not within any one of the counties of the State, we come back to the question of the meaning of "exclusive jurisdiction over the waters and over the lands covered with water," in the State of New Jersey given to New York.

It is clear that this "exclusive jurisdiction" was intended to be something less than that entire and absolute jurisdiction which is incident to State sovereignty, because the sovereign power has not been taken away and the political power of New Jersey still remains over this territory; and because this exclusive jurisdiction is expressly declared to be subject to the jurisdiction of New Jer-
234 sey, in her right of proprietorship and ownership of the lands, and to the exclusive jurisdiction of New Jersey over wharves, docks and improvements made and to be made on the shore of the said State, and over all vessels aground on said shore and fastened to said wharves or docks, except that said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers, of the State of New York, which then existed, or which

might thereafter be passed; and it was also made subject to the exclusive right by New Jersey, to regulate the fisheries in said waters, only that New Jersey could not thereby obstruct navigation.

There is nothing, therefore, to prevent giving the construction to these words, "jurisdiction" in the treaty, that is, according to the common, natural, and well-defined meaning of these words. It is the "authority to judge," "the power to act judiciously, and to administer justice" over the subject thus limited and specified in the treaty; and I think this also includes the power to execute the judgment and enforce obedience to the judgment, if the judgment be in a Court having jurisdiction of the subject of the action, and having power to enforce the remedy demanded. This construction will put in use and give full meaning to the words exclusive jurisdiction of and over the waters, and of and over the lands under water.

We must also give the same construction, and apply to proper use and give full effect and meaning, if possible to all other words of the same article which gives to New Jersey the exclusive jurisdiction of property in the same lands, and also over the wharves, docks and improvements made and to be made on the shore of that State.

One of the distinct claims of the plaintiff is, that the structures complained of are an interference by the defendants with the waters in the Bay of New York and Hudson River; that they have not asked and have not obtained consent of New York so to use and make such structures; that they prevent the spread of the said waters, and interfere with navigation; that the defendants are not parties to the treaty, and have no title themselves to the lands under the water, and cannot set up title in New Jersey as a matter of law, in their defence upon demurrer; and that New Jersey has no power to give consent to make such structures in said waters. The argument of the defendants is, that by the terms of the treaty in question, the State of New Jersey never ceded away, surrendered up, or parted with the right of herself, or that of her citizens, to construct
235 wharves, piers, docks and other improvements upon her shore, and did not intend thus voluntarily to cut herself and her citizens off from the right to carry on trade and commerce by means of the navigable waters which bound her eastern shores.

The settlement of these conflicting claims of the parties is the determination of this main question in the case.

I cannot doubt, and therefore shall not hesitate to assume, without stopping to discuss the question, that before the making of this treaty, New Jersey, as a sovereign State, bounded upon tidal and navigable waters, possessed the common, natural and incident right and authority to construct wharves, docks, piers and other necessary aids to commerce, upon her shores; nor do I understand the plaintiffs to take position contrary to this proposition. They rely upon the terms of the treaty only, and claim that the jurisdiction asserted was granted thereby.

A right and privilege so valuable, so material to the commercial interests of a State, as that of her commerce by her navigable waters with other States, and with the world at large, to be yielded up to a rival and adjoining State, and herself to become, in fact, an inland

State, without apparent consideration, or the expression of a real one, demands that the terms by which it is so surrendered should be expressed in strong and unequivocal language. If New Jersey, by this treaty, has deprived herself and her citizens of the right to build wharves, piers and docks upon the line of navigable water, then, in effect, she has abandoned all her substantial interests in commerce upon water, for commerce upon navigable waters can only be conducted by means of these structures. The right of the defendant to erect the structures in question may be determined by the interpretation which is to be given to this part of the treaty. If the right to erect such works has not been parted with by New Jersey, then New York has no jurisdiction over the subject of the action.

It is very clear to my mind from the express terms of the treaty that New Jersey did not intend to yield up all her commerce by her navigable waters. She possessed at the time of that treaty, docks, wharves, and improvements to accommodate her business to water commerce, and it would be absurd to suppose, or to assume that wharves, and docks and other such improvements, were not then located at the places where only they could be useful, for the purposes of such commerce; to wit, at the wharf line; or, as I understand it, at the line of navigable water; at the place where ships are laden and unladen.

236 As to all such wharves, docks and improvements then made the State of New Jersey who then had full jurisdiction within her territorial limits, saw fit to protect herself, not only by retaining them in the express language of the treaty, "together with the exclusive jurisdiction of and over them," but also, of the right thereafter to make such wharves, docks and improvements. This was reserved by the use of the words in the future tense, "and to be made."

We are called upon to give effect to these words "to be made" also. They cannot be excluded. How can we give them full force, power and effect, in any other way, than to interpret this provision to be, that the "exclusive jurisdiction" over wharves, docks and improvements made, and to be made," was not intended to be and was not parted with, but on the contrary was retained in terms by New Jersey. This interpretation is entirely consistent, in perfect harmony and reconcilable with the granting exclusive jurisdiction to New York over the waters and lands under the water, subject to the rights of New Jersey as above expressed.

With this interpretation, there is no conflict, no inconsistency, and full effect is given to important words. This construction also, is an answer to the argument that as "exclusive jurisdiction" is given to New York over those waters, even to low water mark on New Jersey shore, and that the structures complained of amount to a displacement of those waters; that it is, therefore, an interference with navigations, which is claimed to be one of the violations of her rights.

The right of New York, it is true is exclusive, but is subject to the exclusive rights of New Jersey, as expressed in the treaty. That is, the exclusive rights of New York to the water and land are exclusive of everything, but the exclusive and specified rights of New Jersey to which the treaty declares they are subject. Such jurisdictions as are

conferred by the treaty upon New York, are called in some of the books, "a police jurisdiction," and such it is clearly made by the Seventh Article of the treaty. It authorizes criminal process issued against persons accused of offenses committed within the State of New York, and on vessels within its jurisdiction to be served on parties being upon such waters. This power would have been unnecessary to be thus expressed, if those waters were within the political or physical boundaries of the State of New York, or within the County of New York, or within the "exclusive jurisdiction" of New York, other than for the limited and qualified purposes
237 expressed in the treaty. This is the more clear, from another expression found in the said Seventh Article, which refers to the place in which such arrest may be made, as "waters within the exclusive jurisdiction" of the State of New Jersey, (except only when a vessel shall be fastened to the shore of New Jersey."

This last expression "exclusive jurisdiction" in Article 7, I think, means, political or sovereign jurisdiction, as distinguished from "Judicial jurisdiction."

It is otherwise an inconsistent and useless expression. If it be claimed that the demurrer admits as a fact the allegation in the complaint, that the structures complained of are within the limits whereof exclusive jurisdiction is given to New York, it is sufficient to say, that so far as this may be a fact depends upon how the Law shall first be found, to wit, whether by a proper interpretation of the treaty the locus in quo is within that jurisdiction. The complaint fully describes the place and claims the jurisdiction by virtue of the treaty and statute. The location of the place is a fact; the jurisdiction is a question of law.

If the claim of the plaintiff be valid and sound, that neither the State of New Jersey or her citizens can build structures in said waters below the point of low water mark on the New Jersey side, it may be replied that there is no allegation in the complaint that the structures are in fact below that point; nor can the Court assume to the contrary from the alleged distance to which such structures are extended into the said waters; nor even does the extraordinary area or quantity of surface which it is charged the defendants have so filled up, and the still greater quantity which they intend or threaten to fill up and make solid ground (startling as it does appear to the interests of navigation), establish the fact that they have extended their improvements beyond, or intend to extend them beyond low water mark. Nor yet does it appear to the Court from the alleged displacement and prevention of the spread of waters which has resulted or will result from the making of said structures, that there is any other or greater displacement than is authorized by the reserved rights of the State of New Jersey by the terms of the treaty.

It is, however, alleged in substance that the area so filled up by the defendants, but for such filling up and the obstructions caused thereby, would be navigable waters for vessels of the burden of three hundred tons and under. This, I think, is a fact, and is to be regarded as admitted; but the difficulty I have found from the assump-

tion of the fact is that I cannot judiciously determine from
238 any alleged capacity or depth of water, that such depth or capacity makes a line below or above low water mark, nor that it excludes the right to build wharves, piers, docks or other improvements upon the lands so covered with water for the use of commerce upon navigable waters; nor can the Court judicially declare that vessels of the capacity specified, may not, in high tides, be floated or navigated on the surface between high and low water mark; so that in the absence of an allegation in the complaint that the structures in question are projected beyond the necessary point for the construction of wharves suitable for water commerce, or that there is an unreasonable or unnecessary displacement of navigable waters, I cannot hold the allegation to be sufficient. The right reserved, or granted, to build wharves necessarily carries with it and by necessary implication reserves the right also to displace waters to the proper wharf-line as equally by trestle work as by solid ground. A wharf-line to be of value must extend so far as is necessary to make a depth of water practicable for the use of commerce. If New Jersey has a right to make wharves at all, she has a right to the extent above mentioned, unless that be beyond the wharf line, which is not alleged. And although New Jersey is not the defendant in this action, the right of the plaintiff to invoke the aid of the Court to redress an injury can only be maintained by showing a title to complain and a right to demand its aid; and the defendants have a right in their defence to insist that the right and title claimed by the plaintiff is not in them, but is in another.

Conceding the right of New Jersey to her wharves, made at the time of the treaty and the right to make wharves thereafter, it is argued that these rights are still limited to the Shore of New Jersey, and that the distance alleged of one mile out into the bay cannot by any construction be deemed or held to be the shore intended by the terms of the compact. The intent and meaning of this expression must, of course, be settled by construction. "Shore," in the literary lexicons, is defined to be "the coast or land adjacent to the ocean or sea or to a large lake or river." "Sea shore," according to legal and maritime definitions, is "that portion of ground between ordinary high and low water mark." The language in this treaty which reserves to New Jersey that to which she had a natural right is "the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of the said State, and over all vessels aground on said shore, or fastened to any such
239 wharf or dock." How are these consecutive expressions to be interpreted according to the sense in which the parties concerned must naturally have understood them when this compact was executed and ratified between them? We could not charge the distinguished Commissioners with a want of understanding, or of an intent so absurd as that the wharves, docks and improvements were to be constructed according to the literary definition of a shore, that is, upon the land adjacent to the ocean; and it would hardly be less absurd to suppose that they were to be built upon land, technically known in legal and maritime phrase as "sea shore,"

that is, land between high and low tides—land sometimes covered with water and sometimes not. Neither of the above terms, however, alone, were used. The language employed is "wharves, docks and improvements made, or to be made upon the shores of the said State." This expression is explained, as to its locality, by the language which immediately follows it,—"and of and over all vessels aground on said shore." This includes a place which at times certainly must be navigable. It contemplated not only that vessels may get "aground on said shore," but it also includes a place where wharves and docks may be built, and to which such vessels may be fastened. This explanation of the meaning of the "shore of the State," is conclusive in my mind. It cannot mean land adjacent to the sea, nor technically "Sea Shore," and I shall, therefore, hold this language to mean that the State of New Jersey retained, and now possesses, the jurisdiction and right to build wharves and docks and improvements "upon the shores of that State," and that such shore extends to the wharf line in the waters on the easterly line of said State. Unless this be the construction, it must be held that New York has also cut herself off from the right to build wharves, docks and improvements on the shore of Staten Island, under the provisions of Article Five of the same treaty.

I have not stated all the reasons which have been considered, and which have brought my mind to the conclusion above expressed in regard to the proper interpretation of this treaty. I have already extended the review beyond what is usual in a Special Term opinion,—but I will very briefly state a few other reasons. In looking at the jurisdiction and rights naturally belonging and incident to these States severally and respectively as States bounded upon navigable waters lying between them; looking at the rights that the parties respectively claimed and enjoyed previous to this
240 treaty—and to the then threatened difficulties between these States in regard to the boundary line, of which we may take judicial notice; looking at the importance of the existence of pacific relations for their mutual and reciprocal benefits; looking at the necessity of avoiding conflicts arising from doubts as to the actual boundary line upon water surface and of regulating the questions of jurisdiction between them so that each could enforce their laws in regard to police, to health, quarantine, fisheries, and navigation, which are expressed in the treaty; and looking at the object of the treaty, as expressed in the several preambles we have referred to, and as expressly limited to the settlement of boundary lines and jurisdiction, and which is entirely consistent with the objects mentioned in the body of the treaty and in the preambles; and in the absence of language in the preambles, or in the treaty from which it would appear that the parties intended anything like the Ceding or the Surrendering up of territory, or of the natural and important rights and benefits of either of them to their water commerce with other States and with the world. I have not been able to discover the intent on the part of either State to grant, to cede away, or to surrender to the other any such rights or benefits.

If I am right in the interpretation I have given to the three first

articles of this treaty, and if I am right that the erections and structures complained of are within the jurisdiction which New Jersey before possessed, and which in the treaty she has reserved to herself, it must follow, as the necessary result, that even though it is admitted by the demurrer that the material with which the solid ground structures are formed "consists of dirt, filth and debris of Jersey City, and other parts of New Jersey and New York, and also that the exhalations and stench arising from deposits so made are blown and carried by the prevailing westerly and northwesterly winds over populated territories of the plaintiff, and that they produce disagreeable odors, and that they affect injuriously the sanitary condition of the inhabitants thereof, and of persons navigating the waters of the Bay of New York and Hudson River, it is, notwithstanding, all this, a nuisance over which this Court possesses no jurisdiction, and has no power to make its decree or judgment to abate it, and none to enforce such a judgment upon the subject of this action, if made.

I have not thought it necessary to discuss the defendants' objection that the plaintiffs are estopped by long acquiescence from raising the question of the right of the defendants to make the structures in question. I do not think a party ever acquires the
241 right to create a nuisance or to commit a wrong. This point, however, does not arise under the view I have taken. Nor have I weighed the argument of the defendants as to the contemporaneous construction of the treaty by the State of New Jersey, and her citizens in making such improvements, and the implied assent of the plaintiffs, by their silence in relation to such structures, hitherto. I am not at all certain that these matters are such, if true, as that we can take judicial notice of them, and if the facts stated be patent to the defendants, or even to the plaintiffs, the Court has no knowledge, in fact, of their verity.

The question involved is a grave and important one. Assuming the whole truth of the complaint, it is to be regretted that an injury to navigation, if it be one, and the dangers that threaten the sanitary condition of a populous city, if this be true, should not be restrained and abated.

I was deeply impressed on the argument, and in the subsequent consideration of the case, with the magnitude and importance of the principles at stake, and with the questions of great public and private interest which are involved. It affects, directly and indirectly, the rights of the public and individuals; it affects the great interests of commerce, of navigation, and of the public health; but I have been brought to the conclusion for the reasons above given, that the demurrer is well taken, and that there must be judgment for the defendants.

P. POTTER.

242 United States Circuit Court, District of New Jersey.

Suit No. 1.

Between DANIEL J. LEARY, Complainant,
and
THE MAYOR AND ALDERMEN OF JERSEY CITY and EDWARD FRY, City Collector of Jersey City, Defendants.

On Bill.

Stipulation.

(Filed September 23, 1907.)

It is hereby stipulated and agreed that the following may be considered in evidence in the case of Daniel J. Leary vs. Mayor and Aldermen of Jersey City and Edward Fry, City Collector of Jersey City.

It is admitted that the taxes in question mentioned in the foregoing bill were originally levied for city, county, State and school purposes in the same manner as such taxes were levied upon other property in Jersey City.

September 9, 1907.

MERRITT LANE,
Sol. for Complainant.
ROBERT CAREY,
Sol. for Defendants.

Record of the Proceedings of the Commissioners, Showing their Determination as to the Amount to be Charged.

Taxes Returned as in Arrears, Together with the Amounts Fixed in Lieu Thereof.

Street or avenue.	Block No.	Lot No.	Against whom assessed for taxes by the city.	Year.	Amount in arrears.	Amount to be charged and assessed. Principal.	Interest.	Total.
New York Bay.....	1507	4B 7B	Daniel J. Leary.....	1883	$1,410 40	$1,410 40	$1,720 87	$3,131 27
				1884	1,281 40	1,281 40	1,499 40	2,780 80
				1885	3,084 68	3,084 68	3,455 26	6,539 94
				1886	2,763 60	2,763 60	2,957 43	5,721 03
				1887	7,741 44	4,204 80	.....	4,204 80
				1888	6,007 68	4,350 80	.....	4,350 80
				1889	5,644 80	4,088 00	.....	4,088 00
				1890	5,322 24	3,854 40	.....	3,854 40
				1891	6,106 00	4,146 40	.....	4,146 40
				1892	6,106 00	4,146 40	.....	4,146 40
				1893	5,912 50	4,015 00	.....	4,015 00
				1894	5,912 50	4,015 00	.....	4,015 00
				1895	5,912 50	4,015 00	.....	4,015 00
				1896	5,891 00	4,000 40	.....	4,000 40
				1897	6,213 50	4,219 40	.....	4,219 40
				1898	6,149 00	4,175 60	.....	4,175 60
				1899	6,106 00	4,146 40	.....	4,146 40
				1900	11,333 40	4,991 40	.....	4,991 40
				1901	11,684 00	4,956 00	.....	4,956 00
				1902	11,564 80	4,920 60	.....	4,920 60
				1903	11,440 00	4,867 50	.....	4,867 50
				1904	11,398 40	4,849 80	.....	4,849 80
				1905	12,448 80	4,832 10	.....	4,832 10
				1906	12,450 00	4,407 30	.....	4,407 30
				1907	10,614 08	2,863 86	.....	2,863 86
					$180,465 72	$98,606 24	$9,632 96	$108,239 20

I hereby certify the foregoing to be a true copy of folio 146 of Record Book No. 22 of the Record of Proceedings of the Commissioners of Adjustment in and for the City of Jersey City.

Jersey City, March 22, 1909.

JOS. P. McLEAN, *Clerk.*

Record of the Proceedings of the Commissioners, Showing their Determination as to the Amount to be Charged.

Taxes Returned as in Arrears, Together with the Amounts Fixed in Lieu Thereof.

Street or avenue.	Block No.	Lot No.	Against whom assessed for taxes by the city.	Year.	Amount in arrears.	Amount to be charged and assessed.		
						Principal.	Interest.	Total.
New York Bay, &c.	1513-1514	B. C. G. H.	Point Breeze Ferry Co., &c.	1874	$594 45	$594 45	$995 19	$1,589 64
				1875	493 00	493 00	800 70	1,293 70
				1876	433 80	433 80	682 86	1,116 66
				1877	428 40	428 40	652 92	1,081 32
				1878	397 60	397 60	586 09	983 69
				1879	371 00	371 00	528 36	899 36
				1880	1,788 00	1,788 00	2,457 01	4,245 01
				1881	1,740 00	1,740 00	2,304 05	4,044 05
				1882	2,646 00	2,646 00	3,371 44	6,017 44
				1883	4,050 80	4,050 88	4,958 83	9,009 63
				1884	2,994 90	2,994 90	3,517 08	6,511 98
				1885	3,486 48	3,486 48	3,939 36	7,425 84
				1886	3,510 36	3,510 36	3,670 69	7,181 05
				1887	5,731 20	4,320 00	.....	4,320 00
				1888	4,447 50	4,447 65	.....	4,447 65
				1889	4,179 00	4,179 00	.....	4,179 00
				1890	3,940 20	3,940 20	.....	3,940 20
				1891	4,521 28	4,260 00	.....	4,260 00
				1892	5,651 60	4,260 00	.....	4,260 00
				1893	5,472 50	4,125 00	.....	4,125 00
				1894	5,472 50	4,125 00	.....	4,125 00
				1895	5,472 50	4,125 00	.....	4,125 00
				1896	5,452 60	4,110 00	.....	4,110 00
				1897	5,751 10	4,335 00	.....	4,335 00
				1898	5,691 40	4,290 00	.....	4,290 00
				1899	5,651 60	4,260 00	.....	4,260 00

1900	10,053 30	5,154 60	.....	5,154 60
1901	11,480 00	5,082 00	.....	5,082 00
1902	11,398 00	5,045 70	.....	5,045 70
1903	11,275 00	4,991 25	.....	4,991 25
1904	11,234 00	4,973 10	.....	4,973 10
1905	11,193 00	4,954 95	.....	4,954 95
1906	11,952 00	4,519 35	.....	4,519 35
1907	10,452 28	2,936 67	.....	2,936 67
	$179,397 35	$115,369 26	$28,464 58	$143,833 84

I hereby certify the foregoing to be a true copy of folio 143 of Record Book No. 22 of the Record of Proceedings of the Commissioners of Adjustment in and for the City of Jersey City.

Jersey City, March 22, 1909.

JOS. P. McLEAN, *Clerk.*

245 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1913.

No. 1598.

DANIEL J. LEARY, Appellant,
vs.
MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and THE CITY COLLECTOR OF JERSEY CITY, Appellees.

And afterwards, to wit, on the fourth day of March, 1913, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Hon. George Gray, Hon. Joseph Buffington, and Hon. John B. McPherson, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the twenty-second day of August, 1913, come the parties aforesaid by their counsel aforesaid, and the Court now being fully advised in the premises, renders the following decision:

246 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1913.

No. 1598.

DANIEL J. LEARY, Appellant,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and EDWARD FRY, City Collector of the City of Jersey City, Appellees.

Appeal from the District Court of the United States for the District of New Jersey.

Before Gray, Buffington, and McPherson, Circuit Judges.

BUFFINGTON, *Circuit Judge:*

In the court below Daniel J. Leary, a citizen of the State of New York, brought a bill in equity to enjoin Jersey City, a municipality of the State of New Jersey, from selling certain real estate for defaulted taxes. That court, on final hearing, in an opinion reported at 189 Fed. Rep. 419, found against the plaintiff, and from the decree dismissing his bill Leary appeals.

247 From the proofs it appears that on April 30, 1881, the State of New Jersey, acting by its commissioners appointed under the statute of that state of March 31, 1869, which act was a supplement to one of April 11, 1864, by an instrument attached to the bill as "Exhibit One" conveyed to the Morris and Cumings Dredging Company, a corporation of New York, the locus in quo,

which was submerged littoral land situate in New York Bay and fronting Jersey City. On February 24, 1904, that company assigned to the plaintiff its interest under the said conveyance of the state. On these lands taxes were assessed by the municipal authorities of Jersey City for the years 1883 to 1905, inclusive, and on the legality of such assessments this case turns. Such legality involves in turn several questions, and to them we now address ourselves seriatim. The first and underlying one is, is this submerged land, which abuts the uplands of Jersey City and lies under the waters of New York Bay or harbor, within the sovereignty and jurisdiction of New Jersey? This question turns on the construction and effect given to the compact between the States of New Jersey and New York, 4 Stat. 708. While it was raised by the bill under the averment "that the lands and premises herein mentioned and described are not within the jurisdiction of the State of New Jersey, and not subject to the sovereignty of said state, and cannot be taxed under the authority of said state, although within the geographical boundaries thereof," such position is not tenable. Not only is there a stipulation "that before the lease of the lands as hereinafter mentioned they belonged absolutely to the State of New Jersey, and were and always had been a part of the public domain," but the question of the jurisdiction and taxing power of the state over such lands was adjudged and upheld by the Court of Errors and Appeals of New Jersey in Central R. R. Co. vs. Jersey City, 43 Vroom, 311, a
248 decision affirmed—209 U. S. 472—by the Supreme Court of the United States. It is clear, therefore, that the territory of the State of New Jersey extends to the median line of New York Bay and that incident to the ownership of such territory is the sovereign power to tax the same.

We next turn to the question whether these lands are, for taxing purposes, within the limits of Jersey City. The law will take judicial notice of the universal and unvarying practice of our states to subdivide their entire territory into counties, and their counties into municipal districts. Indeed, the existence within a state of any portion of its territory without county or municipal relation is unheard of. But unless this littoral land of New Jersey is within the County of Hudson and within the boundaries of Jersey City, it is in this anomalous, non-municipal relation, for it is not contended it has or can have any other municipal relation than with Jersey City. The locus in quo abuts the upland property that was part of the Township of Greenville, before that municipality was annexed to Jersey City. The question then resolves itself into ascertaining the water front boundary of the Township of Greenville in the County of Hudson. In the first place the conveyances on which the plaintiff bases his interest and his right to maintain this bill show an assertion by the state of its sovereignty over these lands and an acquiescence by plaintiff's predecessor in title in such assertion. In the state's conveyance, Exhibit One, it is described as "All that tract of land under the waters of the Bay of New York in the City of Jersey City in the County of Hudson and State of New Jersey described as follows." Moreover, Exhibit No. 2 of plaintiff's bill shows that he

accepted an assignment of the Morris and Cumings Dredging Company wherein the land was again described as "that tract of land under the waters of the Bay of New York in the City of Jer-
249 sey City in the County of Hudson and the State of New Jersey," and wherein it is recited that a mortgage of a hundred thousand dollars on said property was recorded in Hudson County. These facts together with the assessment of taxes thereon by the authorities of Jersey City, disclose such an assertion, practice and acquiescence on the part of state, municipality and owner, covering a period of approximately thirty years, in the assumption that the land in question was included in Jersey City as call for that salutary principle of interpretation which makes fixed practice its own interpreter: Stuart vs. Laird, 1 Cranch, 308; United States vs. The Commonwealth, 186 Fed. Rep. 288. But passing by these inferential considerations, we turn to the positive evidence of boundary disclosed in the record. As we have seen, by the Compact of 1833 and its construction by the courts—41 Vroom, 311, and 209 U. S. 476—this submerged land lies within the boundary of New Jersey. The boundary at this point is the middle of the Bay of New York. Such being the case, the Act of New Jersey of February 22, 1840, Rev. of N. J. 1877, p. 205, creating the County of Hudson, included these lands in that county by language which made the boundary line in New York Bay between New York and New Jersey, also the boundary of Hudson County, viz.: "thence down the said Passaic River and Newark Bay, in the several courses thereof, on the boundary lines between the County of Bergen, as the same stood before the passage of this act, and the Counties of Passaic and Essex, to Kill-Van-Kull; thence, eastwardly, on the boundary line between this state and the State of New York, to the Hudson River; thence northwardly, continuing on the said boundary line between this state and the State of New York, up the Hudson River, to the place of beginning * * * and said lines shall hereafter be the division lines between the Counties of Essex, Passaic and Bergen and the
250 State of New York, and the said County of Hudson, respectively." It will thus be seen that the locus in quo is in Hudson County. Is it also included in Jersey City? It will be noted that no contention is made that, if not in Jersey City, it falls within any other New Jersey municipality. Without detailing the various acts and findings of commissioners relating thereto, it suffices to say that the upland which this submerged locus in quo fronts was included in the Township of Bergen, a subdivision of Hudson County. By the Act of March 11, 1862—Laws of New Jersey, 162—"all that part of the County of Hudson which now constitutes the Township of Bergen" was incorporated as the town of Bergen. By the Act of March 18, 1862—Laws of New Jersey, 306—the "southwestern part or portion of the Township of Bergen, as it existed immediately previous to the passage of said act, and comprised, or nearly so, within the limits of what is known as Washington School District, Number Three, bounded on the southeast by New York Harbor," etc., was detached from the town of Bergen and incorporated as the Township of Greenville. Upon the alleged restriction of the Town-

ship of Greenville to the shore line of the waters of New York Bay by the words, "bounded on the southeast by New York Harbor" is based the whole contention of the plaintiff on this territorial question. Addressing ourselves to that question, it should be noted that the subsequent legislation assumes as a fact that the water line boundary of the Township of Greenville is the mid-harbor, interstate line. For example, in the Act of March 11, 1868—Laws of New Jersey, 314—by which the "same territory heretofore known and incorporated as 'The Town of Bergen' is hereby formed into a city corporate, to be designated and known as 'The City of Bergen,'" it will be noted that not only is the Bergen shore boundary carried to the interstate boundary line, but it is stated that the Green-
251 ville Township line also extends to the New York line. The act incorporating the City of Bergen thus describes its pertinent boundaries: "Thence southerly along the center of Mill Creek its several courses into New York Bay, until it intersects the boundary line of the State of New York; thence southerly along said boundary line of the State of New York until it intersects the dividing line between the Township of Greenville and the City of Bergen," etc. But apart from the statutory construction thus placed by the State of New Jersey on its own territorial legislation, we think the words in the Township of Greenville act, viz.: "Bounded on the southeast by New York Harbor," should not receive the narrow construction contended for the plaintiff. To do so is to lose sight of the principle that boundaries by such terms as sea, bay, harbor, creek or river, includes land below high water mark as far as the grantor owns: Atty. Gen. vs. Delaware R. R., 27 N. J. Eq. 631; Boston vs. Richardson, 95 Mass. 146; Luke vs. Brooklyn, 1 Abb. Dec. 24; Rex vs. Landulph, 1 Moody & R. N. P. Rep. 393; McCannon vs. Sinclair, 2 El. & El. (Q. B.) 53. Moreover, it must not be overlooked that in the context in which the words, "bounded on the southeast by New York Harbor" are used, we have not before us the precise accuracy involved in a grant by an individual in conveying a specific part of a larger tract of land, but the general wording of a statute passed with a view to include within some municipal subdivision every part of the state's sovereignty, a purpose necessitated in order to extend the benefits of government to all its territory. In that regard the court below well said:

"The terms used by a sovereign in such grants are not to be subjected to the strict rule of construction as when it grants title to some of its territory to a private grantee. The legislative purpose
252 sought by such territorial subdivisions is to be kept in mind. * * * To admit the contention of complainant under this head, a class of property than which none is more valuable, would escape taxation, not by express legislative exemption—the only way indicated in the city enactments—but by a narrow construction of the word 'on' in running the harbor boundary. Such a rule of construction is not permissible in view of the state's policy, clearly indicated by legislation granting title to lands under tide water, requiring the taxation of all property within the state,

and subdividing the entire territory of the state into taxing districts, to impose and collect such taxes."

To this it may be added that the deed under which the plaintiff claims, and which is exhibited as part of the bill, and is the foundation of his property right to invoke jurisdiction in this case, itself shows the assertion and act of the state locates this land in Jersey City, viz.: "All that tract of land under the waters of the Bay of New York in the City of Jersey City in the County of Hudson and State of New Jersey." For the plaintiff to aver that such is not the fact, that the said lands are neither in the state, county or municipality and to say that the deed conveyed no such land is virtually to undermine the support on which his right to relief is based.

Having thus found that the locus in quo is in Jersey City, we turn to the next question, viz.: Are the lands in question liable for the taxes claimed? As to the actual assessment of the taxes the stipulation concedes "that the taxes in question mentioned in the foregoing bill were originally levied for city, county, state and school purposes in the same manner as such taxes were levied upon other property in Jersey City." But it is contended that the conveyance from the State of New Jersey to the Morris and Cumings Dredging Company, being Exhibit One, was only a lease of the prop-
253 erty, that the state is still the real owner, and that no taxes can be legally assessed against lands owned by the state or against the mere leasehold interest of any one holding under such a conveyance as Exhibit One. The various statutes of New Jersey and the conveyance are fully set forth in the opinion of the court below and by reference thereto we avoid a repetition that would needlessly lengthen the present discussion. After a thorough examination that court held

"that the estate conveyed is an estate in fee simple, with a condition subsequent, the condition being that, if the annual payments are not made when due, the estate may be defeated and that the land described in the instrument made by the State of New Jersey to the plaintiff's grantor is taxable in his hands."

In such conclusion we concur. Without discussing other New Jersey cases, none of which in our judgment rule the present question, it suffices to say that we find support for the foregoing conclusion in Hudson vs. Tunnel Co., 12 C. E. Green, 573; Cook vs. Bayonne, 80 N. J. L. 598, and Cook vs. The Mayor, 77 At. Rep. 1048, decided during the pendency of the present case, wherein the Supreme Court of the state held:

"An instrument calling itself a 'lease' made by the Riparian Commission of this state for lands under water, pursuant to the statutes of 1869 and 1871 (3 Gen. St. 1895, pp. 2788, 2790), which 'bargains, sells, leases and conveys' to the grantee 'her heirs and assigns forever' with habendum in fee and reservation of annual rental, with right of re-entry and of distress in case of non-payment expressly reserved, and covenanting for a further conveyance free and discharged of the rent on payment of a stipulated gross sum,

is a grant in fee subject to a rent charge, and the land therein described is taxable in the hands of the grantee."

Subsequent to the filing of this bill certain proceedings
254 were taken by Jersey City under the New Jersey statute of March 30, 1886—Laws of New Jersey, 149—commonly known as the Martin Act. Such proceeding is reported in Jersey City vs. Speer, 72 Atl. Rep. 448; Aff. 76 Atl. Rep. 1037. Thereupon a supplemental bill was filed in this case in which it was averred that said proceeding had been instituted, that thereunder the commissioner "proceeded to consider the taxes claimed to have been assessed, levied and apportioned against the lands and premises mentioned and set forth in your orator's bill * * * and did report that they had adjusted the alleged taxes against the lands and premises mentioned in your orator's bill of complaint," etc., and that said report was duly confirmed by the Circuit Court of Hudson County. The supplemental bill, by reference to the original bill, then alleged, inter alia, that by reason of the ownership of the fee by the State of New Jersey and of the lands not being within either the territorial jurisdiction of New Jersey or the corporate limits of Jersey City, they were not taxable and the proceedings of the commissioners was illegal and in violation of the plaintiff's constitutional rights. It is, of course, clear that if the fee of the lands in question was in the state or if the lands themselves were not in Jersey City, no valid basis existed on which any adjustment could be based, but it is equally clear that if these lands are in Jersey City and the plaintiff and not the state is the owner of them, they are taxable by the authorities of Jersey City and the adjustment of taxes thus imposed can be and was lawfully confided to such a tribunal. If so, the taxpayer is not denied due process of law and the action of such tribunal cannot be attacked collaterally. That the lands in question are in Jersey City, and that the plaintiff, not the state, is the owner thereof, we have already found, so that the objections which the plaintiff made to the jurisdictional power
255 of the commission, was without foundation. That he did not avail himself of his further right to raise the other questions he now seeks to raise as to lien, limitation, the fact that some of the taxes were assessed prior to the conveyance, and other kindred matters, does not change the situation, for the law gave him that right before the commission. He not only appeared before it, but was represented by counsel when the report came up for confirmation in the Circuit Court of Hudson County. That proceeding—see Jersey City vs. Speer, supra—was before a board of the general nature referred to in Stanley vs. Supervisors, 121 U. S. 550, where the Supreme Court said:

"In nearly all the states, probably in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. * * *

"To these boards of revision, by whatever name they may be

called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgment in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment."

No allegation is here made that the commission did not act in accordance with the formal statutory requirements as to notice and procedure. The plaintiff, as we have seen, was represented
256 by counsel at the meetings and also in court when the report came up for confirmation. The powers committed to the commission by the act were comprehensive and authorized them, inter alia, "to examine into and fix, adjust and determine, as to each parcel of land, how much of such arrearages and subsequent taxes, assessments or water rates, if any, ought, in the way of tax, assessment or water rate, in fairness, equity and justice, to be laid, assessed and charged against and actually collected from said land," etc. The act also provided: "That no writ of certiorari shall be allowed to contest or set aside any tax, assessment and lien fixed or determined by the said commissioners, or to set aside any proceedings under this act to collect the same, unless the party applying for such writ shall give a bond, with approved security, conditioned for the payment of so much of said tax, assessment and lien as shall be ascertained to be justly payable, with interest and costs, nor unless application therefor be made within six months from the confirmation of the said report." It would therefore appear that other than the territorial questions which we have here decided, all other questions the plaintiff here seeks to raise either were such as he could have raised before the commissioners, or in the courts empowered to confirm and review their action. Of neither of these rights under the law has he availed himself and with full opportunity to him to produce testimony and to review any adverse finding, we are of the opinion that his rights were not determined without due process of law. He had notice of the proceeding and indeed appeared before it to contest its jurisdiction. Having thus had an opportunity to raise before a competent tribunal, the administrative questions he now seeks to raise in this court, he cannot justly complain when this court holds all such adminis-
257 trative questions as to the amount, scope and lien of the taxes, questions which he could have raised before such tribunal, are settled by its decree, and cannot be attacked collaterally.

After a full consideration of the many phases of the case, we have reached the conclusion that the court below made no error in dismissing the bill. Its decree is therefore affirmed.

(Received and filed August 22, 1913. Saunders Lewis, Jr., Clerk.)

258 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1913.

No. 1598 (List No. 2).

DANIEL J. LEARY, Appellant,
vs.
MAYOR AND ALDERMEN OF JERSEY CITY et al., Appellees.

Appeal from the District Court of the United States, for the District of New Jersey.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, August 25, 1913.

(Signed) JOSEPH BUFFINGTON,
Circuit Judge.

Endorsed: No. 1598. Order Affirming Decree Received & Filed Aug. 25, 1913. Saunders Lewis, Jr., Clerk.

259 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1913.

No. 1598.

DANIEL J. LEARY, Appellant,
vs.
MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and THE CITY COLLECTOR OF JERSEY CITY, Appellee-.

And afterwards, to wit, on the 23d day of September, 1913, a petition for rehearing was filed, on behalf of Appellant, upon consideration whereof the Court made the following order:

260 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1913.

No. 1598.

DANIEL J. LEARY, Appellant,
vs.
MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and THE CITY COLLECTOR OF JERSEY CITY, Appellees.

Sur Motion for Rehearing.

Per CURIAM:

And now, November 3, 1914, after due consideration had, the petition for a re-hearing is denied as to case No. 1598.

Endorsed: No. 1598. Order Denying Petition for Rehearing in No. 1598. Received & Filed Nov. 4, 1913. Saunders Lewis, Jr., Clerk.

261 In the Supreme Court of the United States.

DANIEL J. LEARY, Complainant Below, Appellant,
against
MAYOR AND ALDERMEN OF JERSEY CITY and THE CITY COLLECTOR OF JERSEY CITY, Defendants Below, Appellees.

The United States Circuit Court of Appeals for the Third Circuit erred in affirming the decree of the United States Circuit Court for the District of New Jersey dismissing the complainant's bill and supplemental bill, and denying the relief prayed for by him and erred in the following particulars:

1. In not finding that the lands upon which the taxes were levied were the lands of the state of New Jersey and not taxable.

2. In not finding that there was no provision of law under which the lands could be taxed.

3. In not finding that to tax the lands and to compel the complainant to pay taxes is a violation of the rights secured to the complainant by section 10 of Article 1, and by the 14th amendment to the Constitution of the United States.

4. In not finding that to permit the collection of taxes
262 upon the lands is a violation of the rights of the complainant granted by paragraph 16, article 1, of the Constitution of the State of New Jersey.

5. In not finding that to permit the collection of taxes upon the lands is a violation of paragraph- 6 and 12 of section 7 of Article 4 of the Constitution of the State of New Jersey.

6. In not finding that the lands were not taxable, not being within the jurisdiction of the State of New Jersey upon a proper construc-

tion of the compact between the states of New York and New Jersey, approved by Congress of the United States, and that to tax them would be depriving the complainant of property contrary to the 14th amendment of the Constitution of the United States.

7. In not finding that the lands upon which it was attempted to levy the taxes were not within the taxing district of the city of Jersey City at the time the taxes were levied, and that to permit the defendans to proceed would be to deprive the complainant of his property without due process of law contrary to the 14th amendment of the Constitution of the United States.

8. In not finding that the lien of the taxes for the non-payment of which it is attempted to sell the property had expired.

9. In not finding that the assessment upon which the taxes were based was illegal and null and void, having been made upon
263 the fee of the real estate and not upon the interests of the complainant therein.

10. In not finding that the leases held by the complainant are not subject to taxation.

11. In not finding that the lands upon which it is sought to levy the taxes receive no benefit from the tax, and that to permit the city of Jersey City to tax the lands in question, so receiving no benefit from the tax, at the regular municipal rate, would be to take property without just compensation within the meaning of section 16, paragraph 1 of the Constitution of the State of New Jersey, and would be taking property without due process of law, within the meaning of section 1 of the 14th amendment of the Constitution of the United States.

12. In not finding that to permit the city of Jersey City to levy taxes upon the lands in question would be to impair the obligation of the contract between the State of New Jersey and the Complainant's assignors, within the meaning of paragraph 1, section 10 of article 1 of the constitution of the United States.

13. In not finding that to permit the City of Jersey City to sell the lands and the interests of the complainant therein for the payment of these taxes would deny to complainant the equal protection of the law within the meaning of section 1 of the 14th amendment of the Constitution of the United States, no other lessee being obliged under the laws of the state of New Jersey to pay the taxes assessed upon a lease, and would deprive the complainant of property
264 without due process of law within the meaning of such section, and would be taking private property for public purposes without just compensation, within the meaning of paragraph 16 of article 1 of the Constitution of the State of New Jersey.

14. In not finding that the state of New Jersey and the city of Jersey City are estopped from claiming that the instruments under which the complainant holds, are leases, and the complainant is not under the obligation to pay the taxes assessed which the defendants are now seeking to collect.

15. In holding that other than the territorial questions raised, other questions which the complainant sought to raise were such as could be raised either before the Adjustment Commissioners or in

the courts empowered to confirm and review their action, and that by reason of such fact the complainant was not deprived of his rights without due process of law, in that the proceedings before the Adjustment Commissioners were proceedings before the taxing board, an administrative body and the intervention of the Circuit Court in the confirmation of their report did not render the proceedings final in any nature, the courts of New Jersey holding that the Circuit Court in so doing, does so only as part of the taxing machinery of the state, and in not finding that to compel the complainant to proceed in the state courts by writ of certiorari would be to deprive him of
265 his property without process of law, and to deny to him the equal protection of the law in that before application can be made to the Supreme Court of the State for certiorari, a bond must be given to secure the payment of the taxes thus converting the tax — a * * * charge against property into a personal obligation and preventing absolutely application for certiorari where the complainant is not able to produce such a bond with sufficient surety and making a distinction between those able to produce such a bond and those unable thereby depriving the complainant of the equal protection of the law, and absolutely preventing a review of the proceedings of the said Adjustment Commissioners, said administrative body, by appropriate judicial proceedings, and in not finding that the proceedings in the state court by certiorari were not adequate in that the award of the writ of certiorari rests wholly within the absolute discretion of the Supreme Court or justice thereof, and there is no appeal from a determination refusing to award the writ; and in finding that the complainant had an adequate remedy at law in the state court, and that by reason of the fact that he had such a remedy at law in the state court, he could not have his rights settled and reviewed by the federal courts in equity.

16. In that the United States Circuit Court of Appeals for the Third Circuit refused to consider any of the questions raised by the complainant's bill and supplemental bill except only those involving the construction of complainant's leases and the territorial questions upon the ground that the determination of the Adjustment
266 Commissioners is conclusive for that by the statute creating the Adjustment Commissioners it is specifically provided that their report and the confirmation thereof should be inconclusive unless the property was liable at the time such tax, assessment and lien was fixed and adjusted to the imposition of the tax, assessment and lien in respect of the purposes for which such tax, assessment and lien was fixed and imposed, or if it appears that any substantial injury was done to the owner of the property by reason of the irregular or illegal manner of imposing or collecting such tax, assessment and lien.

17. In that the United States Circuit Court of Appeals for the Third Circuit refused to consider the second, third, fourth and fifth points made by the complainant, for the reason that he was foreclosed from raising such points by the actions of the Adjustment Commissioners.

18. In that the United States Circuit Court of Appeals for the Third Circuit made no distinction between the relief prayed for by

the complainant with respect to the taxes which had not been adjusted, the taxes which had not been adjusted having been before the Adjustment Commissioners and the complainant being entitled to a consideration by the United States Circuit Court and by the United States Circuit Court of Appeals, of all of the questions raised with respect to such taxes.

19. In that the United States Circuit Court of Appeals for
267 the Third Circuit affirmed the decree of the United States Circuit Court for the District of New Jersey, whereas according to law it should have reversed such decree and granted the relief prayed for in the complainant's bill and supplemental bill.

For the reasons above set forth and for manifest other errors appearing in the record, complainant prays that the decree appealed from may be reversed and the decree of the United States Circuit Court for the District of New Jersey reversed and the relief prayed for in complainant's bill and supplemental bill, granted.

(Signed) MERRITT LANE,
Solicitor for and of Counsel with Appellant.

Endorsed: No. 1598. Assignment of Errors. Received & Filed Apr. 15, 1914. Saunders Lewis, Jr., Clerk.

268 In the Supreme Court of the United States.

DANIEL J. LEARY, Complainant Below, Appellant,
against
MAYOR AND ALDERMEN OF JERSEY CITY and THE CITY COLLECTOR OF JERSEY CITY, Defendants Below, Appellees.

Stipulation.

It is consented and stipulated that the bond for costs of the appellant on appeal from the United States Circuit Court of Appeals for the Third Circuit to the Supreme Court of the United States in the above entitled matter be fixed at the sum of Three Hundred Dollars and no surety shall be required and that the same when filed shall be effective as a bond for costs upon such appeal.

(Signed) JOHN MILTON,
Solicitor for Defendant.

Endorsed: No. 1598. Stipulation as to Bond Received & Filed Apr. 15, 1914. Saunders Lewis, Jr., Clerk.

269 Know all men by these presents, That I, Daniel J. Leary, am held and firmly bound unto the Mayor and Aldermen of Jersey City and the City Collector of Jersey City in the just and full sum of Three Hundred Dollars ($300), to be paid to the said Mayor and Aldermen of Jersey City and the City Collector of Jersey City, their heirs, successors, executors, administrators and assigns, to which payment well and truly to be made, I bind myself, my heirs, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with my seal and dated this sixth day of January, A. D. Nineteen hundred and fourteen.

Whereas, lately at a session of the United States Circuit Court of Appeals for the Third Circuit, in a suit pending in said Court, between the said Daniel J. Leary, appellant and the Mayor and Aldermen of Jersey City and the City Collector of Jersey City, defendants, a decree was rendered against the said Daniel J. Leary affirming the decree of the United States Circuit Court for the District of New Jersey, dismissing the Bill of Complaint and the Supplemental Bill, and the said Daniel J. Leary did obtain an order allowing an appeal to the United States Supreme Court to reverse the decree of the above-entitled suit, and a Citation is about to be issued:

Now the condition of the above obligation is such that if the said Daniel J. Leary shall prosecute said appeal to effect and shall answer all damages and costs that may be awarded against him if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and virtue.

(Signed) DANIEL J. LEARY. [SEAL.]

Signed, Sealed and Delivered in the presence of
(Signed) JAMES S. LYONS.

This bond is approved as to form, amount and sufficiency of surety in accordance with stipulation filed.

April 8, 1914.

(Signed) MAHLON PITNEY,
Associate Justice Supreme Court of the United States.

It is consented that this bond be approved.

(Signed) JOHN MILTON,
Solicitor for Respondents.

Endorsed: No. 1598. Bond Received & Filed Apr. 15, 1914, Saunders Lewis, Jr., Clerk.

270 In the Supreme Court of the United States.

DANIEL J. LEARY, Complainant Below, Appellant,
against
MAYOR AND ALDERMEN OF JERSEY CITY and THE CITY COLLECTOR OF JERSEY CITY, Defendants Below, Appellees.

Petition for Appeal from the United States Circuit Court of Appeals for the Third Circuit.

(Lands Leased to Morris-Cumings Dredging Co.)

To the Honorable Edward Douglass White, Chief Justice of the United States, or any Associate Justice of the United States, or any Judge of the United States Circuit Court of Appeals for the Third Circuit:

Now comes Daniel J. Leary, the appellant, complainant in the suit originally instituted in the United States Circuit Court for the

District of New Jersey, by his solicitor and Counsel and complains:

That in the rendition of the decree of the United States Circuit Court of Appeals for the Third Circuit sitting at Philadelphia, in the State of Pennsylvania, in the above styled and numbered cause, in the ninth day of November, A. D. Nineteen hundred and thirteen, dismissing the petition for a re-hearing upon the opinion theretofore and on the twenty-second day of August, Nineteen hundred and thirteen delivered by the said United States Circuit Court
271 of Appeals for the Third Circuit, and in the rendition of the decree of the said United States Circuit Court for the District of New Jersey in said cause dismissing the complainant's bill of complaint and denying the relief prayed therein, and dissolving the interlocutory injunction theretofore granted, manifest error has intervened to the great damage of the petitioner; that the jurisdiction of the Circuit Court of the United States for the District of New Jersey depended, besides diversity of citizenship, upon the fact that the cause was one arising under the constitution and laws of the United States, requiring a consideration of among other constitutional rights asserted by the complainant of his rights to be protected from having his property taken without due process of law; from being denied the equal protection of the law; from having effect given as against him to laws of the State of New Jersey, impairing the obligation of his contract with the state of New Jersey, and required the construction of the compact between the states of New Jersey and New York approved by an Act of Congress settling the rights of the respective states in lands under water in the Hudson River and New York Bay; all of which questions were distinctly set forth in the Bill and Supplemental Bill of Complaint and jurisdiction in the Circuit Court of the United States claimed therefore; all of which said matters will appear by the record and by the Assignment of Errors presented herewith; that the amount involved therein in the matter in controversy exceeds the sum of two thousand
272 dollars besides costs, and this is not a case in which the jurisdiction of the Circuit Court of Appeals is made final, and the said Daniel J. Leary does hereby in accordance with the Constitution and laws of the United States and the statute in such case made and provided, appeal from such decree to the Supreme Court of the United States.

Wherefore your petitioner prays for the allowance of such appeal; to the end that the cause may be carried to the Supreme Court of the United States, and for supersedeas of such judgment and such other process as is required to perfect the appeal prayed for, to the end that the error therein may be corrected, and that the decree of the Circuit Court of the United States for the District of New Jersey may be reversed and the relief prayed for in your petitioner's bill and supplemental bill may be granted to him.

(Signed) MERRITT LANE,
Solicitor for and of Counsel with Petitioner.

Endorsed: No. 1598. Petition for Appeal from the United States Circuit Court of Appeals for the Third Circuit. Received & Filed Apr. 15, 1914. Saunders Lewis, Jr., Clerk.

273 In the Supreme Court of the United States.

DANIEL J. LEARY, Complainant Below, Appellant,
vs.
MAYOR AND ALDERMEN OF JERSEY CITY and THE CITY COLLECTOR OF JERSEY CITY, Defendants Below, Appellees.

Order Allowing Appeal.

Lands Leased to Morris & Cumings Dredging Co.

On motion of Merritt Lane, solicitor for and of counsel with the appellant;

It is ordered that the appeal to the United States Supreme Court from the decree of the United States Circuit Court of Appeals for the Third Circuit affirming the decree of the United States Circuit Court for the District of New Jersey, be and the same is hereby allowed, and that process issue in accordance with the law and practice of the Supreme Court of the United States to carry the cause to the Supreme Court of the United States. Supersedeas is allowed and bond fixed at the sum of Three Hundred dollars ($300) conditioned as the law directs, the amount of such bond being fixed in accordance with stipulation filed and upon which said bond there need be no surety; also in accordance with stipulation filed, this eighth day of April, nineteen hundred and fourteen.

(Signed) MAHLON PITNEY,
Associate Justice Supreme Court of the United States.

Endorsed: No. 1598. Order Allowing Appeal. Received & Filed Apr. 15, 1914. Saunders Lewis, Jr., Clerk.

274 UNITED STATES OF AMERICA, *ss:*

President of the United States to the Mayor and Aldermen of Jersey City and the City Collector of Jersey City, Greeting:

You are hereby cited and admonished to be and appear at the term of the Supreme Court of the United States, to be held at the City of Washington, in the District of Columbia, within thirty (30) days from the date of this writ pursuant to an appeal allowed by the Honorable Mahlon Pitney, an Associate Justice of the Supreme Court of the United States from the United States Circuit Court for the third circuit, in a cause wherein Daniel J. Leary was complainant below and appellant, and the Mayor and Aldermen of Jersey City and the City Collector of Jersey City were defendants below and appellees, to show cause, if any there be, why the judgment in the said appeal mentioned, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Honorable Mahlon Pitney, Associate Justice of the Su-

preme Court of the United States of America this 8th day of April, A. D. nineteen hundred and fourteen.

(Signed) MAHLON PITNEY,
Associate Justice Supreme Court of the United States.

Endorsed: No. 1598. Citation. Service admitted for the Def't Mayor and Aldermen of Jersey City of within Citation. (Signed) John Bentley, Solicitor for Mayor and Aldermen and Collector of Jersey City. April 13, 1914. Received & Filed Apr. 15, 1914. Saunders Lewis, Jr., Clerk.

275 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, Saunders Lewis, Jr., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby Certify the foregoing to be a true and faithful copy of the original transcript of record and proceedings in this Court in the case of Daniel J. Leary, Appellant, vs. Mayor and Aldermen of the City of Jersey City and the City Collector of Jersey City, Appellees, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this sixteenth day of April in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-ninth.

[Seal United States Circuit Court of Appeals, Third Circuit.]

SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

Endorsed on cover: File No. 24,183. U. S. Circuit Court Appeals, 3d Circuit. Term No. 134. Daniel J. Leary, appellant, vs. The Mayor and Aldermen of the City of Jersey City and The City Collector of the City of Jersey City. Filed April 22d, 1914. File No. 24,183.

Office Supreme Court, U. S.
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JAMES D. MAHER
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 21[redacted]8

DANIEL J. LEARY,

Appellant,

and

MAYOR AND COUNCIL OF THE CITY OF JERSEY CITY AND THE CITY COLLECTOR OF THE CITY OF JERSEY CITY,

Appellees.

On Appeal from the Circuit Court of Appeals for the Third Circuit.

BRIEF OF APPELLANT.

MERRITT LANE,
Of Counsel for Appellant.

APPEAL PRINTING COMPANY, NEW YORK

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Supreme Court of the United States.

No....., October Term, 1916.

DANIEL J. LEARY,
Appellant,

and

MAYOR AND COUNCIL OF THE CITY OF JERSEY CITY AND THE CITY COLLECTOR OF THE CITY OF JERSEY CITY,
Appellees.

On appeal from the Circuit Court of Appeals for the Third Circuit, which affirmed the decree of the United States Circuit Court for the District of New Jersey dismissing complainant's supplemental and original bill of complaint.

BRIEF OF APPELLANT.

Statement of the Case.

This appeal brings up for review the decree (page 209) of the Circuit Court of Appeals for the Third Circuit, upon opinion (page 202) affirming a decree of the United States Circuit Court for the District of New Jersey (page 90) upon an opinion by Rellstab, Judge, (page 95) dismissing the complainant's bill and supplemental bill.

The case was brought by a non-resident of the State of New Jersey against the Mayor and Aldermen of the City of Jersey City and the City Collector thereof praying for an injunction re-

straining the defendants from selling or further advertising for sale the premises, lands under water adjoining the Greenville shore in Jersey City, Hudson County, New Jersey, mentioned in the bill of complaint for the purpose of collecting alleged taxes therein mentioned, and from giving any certificate of sale or deed therefor, and from further interfering with the complainant's possession and enjoyment of the premises and *leasehold rights therein,* and directing the defendants to cancel the taxes attempted to be levied upon the lands and restraining them from further proceeding to levy taxes thereon while the complainant holds his leasehold interest therein, and for decrees determining that the defendant, the Mayor and Aldermen of the City of Jersey City, by reason of said alleged taxed liens has no estate or interest in or encumbrance upon the lands and premises.

The cases were submitted upon the bills, answers, two stipulations of fact (pages 42-67) and proofs (p. 60).

The suit involves the taxation upon lands originally leased by the State of New Jersey to the Morris & Cumings Dredging Company known as lots 4B and 7B, Block 1504, land wholly under water and extending beyond the low water mark of New York Bay.

The lease was made by the State upon the 30th day of April, 1881, at an annual rental of $4,233.60. The lessee is given the privilege of purchase by paying the sum of $60,480. Commencing in the year 1883 the City of Jersey City levied taxes upon an assessment based *upon the value of the fee* and not upon the interest of the complainant for each year which alleged tax in 1902 aggregated the sum of $122,114.44 without penalties or interest. It con-

tinued to assess for the years 1903, 1904 and 1905 taxes aggregating without interest or penalties $35,287.20.

Subsequent to the filing of the original bill of complaint the Adjustment Commissioners appointed under an act known as the Martin Act, Chapter 112 of the Laws of 1886, set out in extenso in the supplemental bill of complaint (p. 55) which Commissioners were appointed at the time of the passage of the act and to which under operation of law the City referred all tax arrearages, the appointment of the Commissioners having been made upon the application of the City, adjusted the taxes on lots 4B-7B, Block 1507 from the year 1883 to the year 1907 at the sum of $108,239.20, charging taxes for each year, see Exhibit A, page 199.

Under the Martin Act under the provisions of which these taxes were adjusted, it is provided (p. 55) that the report of the Adjustment Commissioners upon being confirmed

> "Shall be final and conclusive upon the said city and upon all persons owning or having any interest in or lien upon said lands and against all persons whomsoever, and the amounts so fixed, determined, certified and confirmed in each case shall thereupon become and be a valid and binding tax, assessment and lien on the lands so designated *in lieu and instead of all outstanding claims of the city for arrearages of taxes, assessments or water rates, levied or confirmed or attempted to be levied or confirmed prior to the making of the said report, and shall be a valid lien on said lands having priority over all other liens, claims or demands whatsoever except taxes, assessments or water rates levied after the making of the said report.*"

It is further provided that the City Collector shall proceed to sell (p. 56).

> "Said lot or parcel of land at public auction to the highest bidder."

And it is further provided (p. 56),

> "That upon receiving the purchase money, such purchaser, his heirs, legal representatives or assigns, shall take a good and sufficient title to the property *sold in fee simple, absolute free of all encumbrances.*"

And further:

> "And which said deed shall be presumptive evidence in all courts and places, and in any proceedings or actions to be by such purchaser, his heirs, legal representatives or assigns, taken, prosecuted or defended for the recovery of the possession of the property so sold as aforesaid, or in the establishment or defense of his or their title shown as aforesaid by such deed, *the title shall not fail or be defeated by reason of any irregularity or formal defect in the procedure taken under this act, upon which the sale shall have been made or the title conveyed as aforesaid, or by reason of any illegality in fixing and adjusting the tax, assessment and lien to enforce which such sale was made, or in the proceedings for collecting the same, provided the property sold was liable at the times such tax assessment and lien was fixed and adjusted to the imposition of a tax assessment or lien in respect of the purposes for which such tax, assessment and lien was fixed and imposed, and it does not appear that any substantial injury was done to the owner of the property by reason of the irregular or illegal manner or method of fixing, imposing or collecting said tax, assessment and lien.*"

Under Section 2 of the Act, the Commissioners of Adjustment are expressly forbidden to take into consideration in making up their report "any supposed want of jurisdiction, invalidity, irregularity or defect in any of the proceedings had for the levying, imposing or confirming any such taxes, assessment or water rates in arrears." And by Section 3 of such act the report of the Commissioners has the effect of creating a *"new lien in lieu of outstanding claims"* and such new lien has priority over all other liens or claims or demands whatsoever.

These facts are all admitted by the answer and stipulation of facts.

(Paragraph 14 of the supplemental bill (p. 60) admitted by the stipulation (p. 67), admitted by the answer, p. 79).

The complainant, by attorney, appeared before the Adjustment Commissioners and protested against the jurisdiction of the Board (pp. 70-76).

The arrearages of taxes went before the Adjustment Commissioners by operation of law at the time of their appointment (p. 70). The commissioners were appointed at the request of the City and by the operation of the act, all arrearages went to them.

The complainant endeavored to have it held that the Commissioners were acting judicially. They refused to do so (pp. 76, 77-78). Upon the return of their report, the complainant endeavored to have the matter removed into the United States Circuit Court. The Court refused to permit the removal upon the ground that the proceeding was not a judicial proceeding (p. 76).

It will be observed that at the time the lease was originally made by the State of these lands owned

by the State under water, the lands included within it were of a certain circumscribed area. They extended so many feet beyond low water mark out into the Bay. It was provided in the lease that if the line for solid filling was extended, the area comprised within the lease should also be extended. This line was extended in 1900 some 2,000 feet. The Adjustment Commissioners have levied and assessed a new lien for taxes for all of the years from 1883 upon the lands as they now exist, entirely different than they existed at the time the taxes were levied and assessed (pp. 68, 69, 73).

Neither the complainant nor his predecessors in the title had any interest whatever in the lands beyond the line for solid filling as fixed in 1883 until the line was extended in 1890, the land beyond the line for solid filling as it existed in 1883, until the line was extended, belonging to the State of New Jersey, subject to no rights of any other person.

And it is the properties in the condition that they are at the present time that the City Collector seeks to sell to secure the amounts of the adjusted liens for the taxes for *all* of the years.

Upon this adjustment report being confirmed by the court and the City Collector threatening to sell under it, the supplemental bill was filed.

The complainant became the owner of the leases by assignment upon the 24th day of February, 1904.

At the time the complainant took the assignment he got it for valuable considerations (Stipulation, p. 43, par. 3).

The supplemental bill also alleges (p. 60, par. 14) that when he obtained the assignments of lease

there were no liens for taxes upon the lands and premises. This, contained in the 14th paragraph of the Supplemental Bill, is admitted in the stipulation (p. 67).

Resume of Facts.

From this statement of facts, all admitted, it appears that the Riparian Commissioners of the State of New Jersey, acting for the State, made a lease of lands under water, in which lease the areas of the lands demised was definitely defined; that the taxing authorities of Jersey City taxed the lands as if ~~it were~~ a fee commencing two or three years after the lease had been given, and then continued to tax them as upon a fee up to the present time. The lease provided for the payment of annual rentals which have always been paid. It also provided for privilege of purchase which has never been exercised. That subsequently the area covered by the lease was changed by reason of the exterior line for solid filling being moved further out into the Bay, the lease providing that upon the exterior line for solid filling being so moved out into the Bay the line of the lands demised by the lease should be likewise extended. That subsequently the lease was assigned to a bona fide purchaser for value, the present complainant. That subsequent to this the Adjustment Commissioners of Jersey City adjusted the taxes upon the land and premises for each of the years for which a tax had been previously imposed, computing the tax as if the ownership of the fee was in the lessee and without regard to the change in the area of the property taxed, creating a new lien for a lump sum upon the property of its present area and including within this new lien taxes which had been imposed upon property of a different area, or in other words different property.

That both the original tax assessors and the adjustment commissioners computed the tax as if a fee in the possession of the lessee is admitted (Stipulation, page 44).

> "That the assessments are at the same rate and the valuation is fixed in the same way as the valuation and rates on lands under water adjoining held by grant from the State of New Jersey, there being no distinction made in the assessments between a grant from the State and a lease from the State, a lease and grant being assessed for purpose of taxation at the same valuation."

Supplemental bill (page 59, par. 9). "And your orator further shows that the amount certified by the Adjustment Commissioners as adjusted taxes upon said lands and premises was fixed and adjusted upon the fee of said lands, which is in the State of New Jersey." This charge of the bill is admitted by the stipulation (p. 67).

Specification of Errors and Questions Involved.

Although the case went from the Circuit Court of the United States to the Circuit Court of Appeals of the Third Circuit by appeal, appellant filed in the Circuit Court of Appeals a formal assignment of errors (page 91). There was also filed a formal assignment of errors in this Court (page 210).

The assignment of errors, nineteen in number, should, for the purpose of argument, be considerably reduced.

It will be contended in this Court that the decree below, affirmed by the Circuit Court of Appeals, was erroneous in that it dismissed the bill

and supplemental bill of complaint whereas, in fact, it should have granted the relief prayed for by the appellant for the following reasons:

I.

The lands are not taxable because the effect of the transfers held by the appellant is that of leases and there is no provision of law under which the taxes for the non-payment of which the lands are about to be sold can be levied.

II.

To permit taxation would deprive the appellant of his rights secured to him under the Constitution of the United States, fourteenth amendment, in that it would deprive him of his property without due process of law.

III.

To permit the collection of taxes imposed would be to deprive the appellant of the equal protection of the law guaranteed to him under the fourteenth amendment of the Constitution of the United States.

IV.

To permit the collection of the taxes would be to give effect to a law impairing the obligation of a contract, to wit, the contracts of lease and assignment.

V.

To permit the adjusted lien to be collected would be to permit the taking of property without due compensation within the meaning of paragraph 16, article I of the Constitution of the State of New Jersey, and would be a taking of private property without due process of law within the meaning of the 14th amendment to the Constitution of the United States inasmuch as the lands receive no municipal benefit.

VI.

To permit the taxation of the lands in the hands of the lessee would be in violation of the constitutional provision of the State of New Jersey forbidding the depletion of the school fund.

VII.

The adjusted taxes are illegal, having been made upon the real estate as upon a fee and not upon the interest of the appellant therein.

VIII.

The adjusted taxes are illegal because the lands are not within the taxing district of the city of Jersey City.

IX.

The adjustment is illegal because the adjustment is made a lien upon other land than the land upon which the original lien for various years' taxes was imposed.

X.

The adjustment is illegal because there is included in it taxes for years the lien of which had expired, the appellant being a bona fide purchaser for value.

The Circuit Court has determined that the grant from the State was a grant of a fee upon conditions subsequent, and has held that this was determinative upon every issue raised except that which had to do with whether the land was within the taxing district of Jersey City (and the Circuit Court of Appeals has affirmed such judgment) (Point VIII).

The first of these points it decided adversely to the appellant. The second it held unnecessary to determine because of the adjustment which it conceived under the opinion of this Court in *Stanley* v. *Supervisors of Albany,* 121 U. S., page 535, could

not be attacked collaterally. It paid no attention whatever to the claim of the appellant based upon the proposition that the adjusted tax was made a lien upon lands not assessed for the original taxes and that therefore lands were being sold to satisfy taxes imposed upon other lands.

The Circuit Court of Appeals, although filing a separate opinion (page 202) practically affirmed all that the Circuit Court had said, save that it extended the doctrine of *Stanley* v. *Supervisors,* 121 U. S. 550, to the extent of forbidding the Court assuming jurisdiction to determine anything except two questions, first, whether the transfers to the appellant were grants or leases, and second, whether the lands were within the taxing district of Jersey City, holding (page 207) that the points sought to be raised, to wit, the first, second, third and fourth, were settled by the holding that the transfers were grants upon conditions subsequent rather than leases. The fifth, sixth and seventh it ignored. The eighth it held adversely to the complainant. The ninth and tenth it refused to consider upon the ground that it was precluded from so doing under the doctrine of *Stanley* v. *Supervisors,* 121 U. S., p. 550.

Briefly, the questions which this Court is asked to determine are the effect of the lease to the appellant is it a freehold or a lease; is not the taxation of the lands, to the appellant as owner, a violation of the constitutional rights of the appellant not to have his property taken without due process of law, or to have the equal protection of the law within the 14th amendment of the Constitution of the United States; not to have his private property taken for public use without just compensation within the meaning of the Constitution of the State of New

Jersey; whether to permit the taxation of the interest of the appellant of these lands does not result in a depletion of the school fund within the prohibition of the Constitution of the State of New Jersey; whether to permit these lands and the interest of the appellant therein to be sold for an assessment based upon the value of the fee rather than upon the value of the appellant's interest therein, does not result in taking his property without due process of law within the meaning of the 14th amendment of the Constitution of the United States and does not result in depriving him of his private property for public use without just compensation within the meaning of the Constitution of the State of New Jersey; whether the adjusted tax being made a lien upon lands other than those upon which the original taxes were assessed, the adjustment is illegal and void, and to permit a sale thereunder would result in taking the appellant's property without due process of law; whether the lands are within the taxing district of Jersey City.

BRIEF OF THE ARGUMENT.

Preliminary.

There are two preliminary questions which will be first discussed:

A. The right of review in this court in this case and the scope of the review.

B. The effect of *Stanley* v. *Supervisors,* 121 U. S., p. 550.

A. The right of review in this court in this case and the scope of the review.

The appeal in this case was allowed by Mr. Justice Pitney upon a formal application and after due consideration.

No motion has been made to dismiss nor is it contemplated that one will be made. It is thought advisable, however, to inform the court as to precisely what the basis of the appeal is and the scope of the review.

At the time this bill was filed the Circuit Court of the United States by the act of March 3d, 1875, Chapter 137, 18 Statutes at Large, 470, 4 Fed. Statutes 265, was given jurisdiction over all cases of a civil nature at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs the sum or value of two thousand dollars and arising under the Constitution or laws of the United States or in which there is a controversy between citizens of different states.

In *Tennessee* v. *Davis*, 100 U. S. p. 257; *New Orleans, etc., R.R. Co.* v. *Mississippi*, 102 U. S. 140; *Leonard* v. *Shreveport*, 28 Fed. Rep. 257; *Illinois Central R. R. Co.*, 16 Fed. 887, it is held that cases arising under the laws of the United States, are such as grow out of the legislation of Congress, whether they constitute the right or privilege or claim or protection, or defense of the party in whole or in part by whom they are asserted, and that the fact that other questions are involved does not deprive the court of jurisdiction and that the court once having acquired jurisdiction will determine all questions. The mere fact that the federal question is determined against the complainant does not deprive the court of jurisdiction.

"A federal Circuit Court, having properly obtained jurisdiction of a suit by reason of the federal questions set up by the bill, has the right to decide all questions in the case, even though it decides the federal questions adversely to the party raising them, or even if it omits to decide them at all, but decides the case on local or state questions only."

Silver v. *Louisville, etc., R. R. Co.,* 213 U. S. 175, 29 S. Ct. 451, 53 U. S. 753, 213 U. S. 199, 29 S. Ct 458, 53 U. S. 760.

THE JURISDICTION OF THE CIRCUIT COURT IN THE CASE AT BAR DID NOT DEPEND SOLELY UPON DIVERSITY OF CITIZENSHIP, SO THAT THE DECREE OF THE CIRCUIT COURT OF APPEALS IS NOT FINAL UNDER SECTION 6 OF THE CIRCUIT COURT OF APPEALS ACT OF 1891.

The bill, while brought by a non-resident, invoked the jurisdiction of the Circuit Court upon the ground that the case involved the construction of an act of Congress, to wit, the act which approved the compact of 1833 between New York and New Jersey set forth in full in the bill of complaint (Exhibit 5, page 23, Act of Congress, Exhibit C. 84, p. 173), and also upon the ground that the constitutional rights of the appellant under the 14th amendment of the Constitution of the United States were sought to be invaded. These constitutional rights are fully set forth in the brief on the argument and fully and clearly set forth in the bill and supplemental bill of complaint.

One of the questions raised was whether or not the lands were within the jurisdiction of the State. The original bill was filed on the 9th day of July, 1906, and by the filing of that bill the Circuit Court acquired jurisdiction. So that within the

meaning of the "Circuit Court of Appeals Act" jurisdiction was obtained by the Circuit Court upon grounds other than mere diversity of citizenship.

That this raised a clear federal question which the parties were entitled to have determined by this court was determined by this court in *Central Railroad Co.* v. *Jersey City,* 209 U. S. p. 472, 52 L. Ed. at p. 896, in which case this court upon writ of error to the Court of Appeals of the State of New Jersey, upon the merits, determined one of the questions raised by the bills in the case at bar, to wit, whether the lands were within the state or not, and if not within the state whether an attempt was being made to deprive the complainant of his property contrary to the 14th amendment.

This determination was adverse to the claim of the appellant originally made in the case at bar. But this court recognized that the question was a fair federal question. At the time of the determination of this court in the Central Railroad case the bill in the case at bar had been filed, and the case partly heard, so that the decision rendered by this court in the Central Railroad case could not divest the jurisdiction of the Circuit Court, it having attached at the time of the filing of the bill, and upon grounds other than *mere* diversity of citizenship.

In Federal Equity Cases, Simkins, at p. 765 it is said: "If, however, the jurisdiction of the circuit courts rests upon diversity of citizenship and a federal question *when the suit is begun,* and appears in the pleading in due and logical form, and the case is carried to the circuit court of appeals, and judgment entered in said court, then such judgment could not be final, and an appeal or error

would lie to the Supreme Court from the circuit court of appeals' judgment." Citing the following cases:

Howard v. *United States,* 184 U. S. 676, 46 L. Ed. 754.
Loeb v. *Columbia Twp.* 179 U. S. 470, 45 L. Ed. 286, 287.
Fidelity Mut. Life Asso. v. *Mettler,* 185 U. S. 315, 46 L. Ed. 925.
Cound v. *Atchison, T. & S. F. R. Co.,* 173 Fed. 527.
Empire Stat-Idaho Min. & Developing Co. v. *Hanley,* 198 U. S. 292, 40 L. Ed. 1053.
Arbuckle v. *Blackburn,* 191 U. S. 405, 48 L. Ed. 239.
Union P. R. Co. v. *Harris,* 158 U. S. 328, 39 L Ed 1003.
Press Pub. Co. v. *Monroe,* 164 U. S. 110, 41 L. Ed. 368.

In *Northern Pacific Railway Company* v. *John A. Soderberg,* 188 U. S. 526, 47 L. Ed. 576, this court said: "Motion was made to dismiss this appeal for the reason that, as the jurisdiction of the circuit court was invoked upon the ground of diverse citizenship, the decree of the circuit court of appeals is final, under section 6 of the court of appeals act of 1891 as interpreted by the decisions of this court in *Colorado Cent. Consol. Co.* v. *Turck,* 150 U. S. 138, 37 L. Ed. 1030, *Borgmeyer* v. *Idler,* 159 U. S. 408, 40 L. Ed. 199 and *Press Pub Co.* v. *Monroe,* 164 U. S. 105, 41 L. Ed. 367. But to impress the attribute of finality upon a judgment of the circuit court of appeals, it must appear that the *original* jurisdiction of the circuit court was dependent 'entirely' upon diverse citizenship. That is not the case here. Plaintiff's bill does, indeed, set up a diversity of citizenship as one ground of

jurisdiction, but, as it appears that its title rests upon a proper interpretation of the land grant act of 1864 as to the exception of non-mineral lands, there is another ground wholly independent of citizenship under that clause of section 1 of the act of 1888 clothing the circuit court with jurisdiction of all civil suits involving over $2,000, 'arising under the constitution or laws of the United States.' If the case made by the plaintiff be one which depends upon the proper construction of an act of Congress, with the contingency of being sustained by one construction and defeated by another, it is one arising under the laws of the United States."

The appellate jurisdiction of the Court of Appeals is fixed by section 128 of the act of March 3d, 1911, Fed. Statutes Annotated, Supp. 1912, p. 195, where it is provided that their decision shall be final "in all cases in which the jurisdiction is dependent *entirely* upon the opposite parties to the suit or controversy being aliens and citizens of the United States, or citizens of different states."

By section 241 of the act of March 3d, 1911, Fed. Statutes Annotated, Supp. 1912, p. 232, it is provided: 'That in any case in which the judgment or decree of the circuit court of appeals is not made final by the provisions of this title, there shall be of right an appeal or writ of error to the Supreme Court of the United States where the matter in controversy shall exceed one thousand dollars, besides costs."

In *Christianson* v. *County of King*, (1915) 239 U. S. 356, this court said: 'The motion to dismiss must be denied. It sufficiently appears from the amended bill that jurisdiction did not depend *solely* upon the citizenship of the respective parties, but

that the controversy involved, with the other questions, the construction of the act of Congress prescribing the authority of the territorial legislature. In this view, the decision of the circuit court of appeals is not final. *Vicksburg* v. *Henson*, 231 U. S. 259, 267, 58 L. Ed. 209, 215, 34 Sup. Ct. Rep. 95.

In *Michigan Central R. Co.* v. *Vreeland*, 1913, 227 U. S. 59, 33 Sup. Ct. 192, 57 U. S. (L. Ed) 417 this court said: *"The fact that since the allowance of a writ of error all the constitutional questions have been decided adversely to the plaintiff in error does not justify a dismissal of the case by the Supreme Court."*

The case being one, therefore, in which the appellant is entitled as matter of right to an appeal from the Circuit Court of Appeals to this court he has the right to ask this court to pass upon every question raised either in the Circuit Court or in Circuit Court of Appeals.

B. The effect of *Stanley vs. Supervisors*, 121 U. S., p. 550.

The Circuit Court of Appeals and the Circuit Court held that by reason of the opinion of this court in *Stanley* v. *Board of Supervisors*, 121 U. S. 550 it was prohibited from considering certain of the questions raised, and that upon the ground that the Adjustment Commissioners was such a board as was contemplated by this court in that case and that the action of that board was judicial and could not be collaterally attacked.

The Circuit of Appeals said:

> "It would therefore appear that other than the territorial questions which we have

> here decided, all other questions the plaintiff here seeks to raise either were such as he could have raised before the Commissioners, or in the courts empowered to confirm and review their action. Of neither of these rights under the law has he availed himself and with full opportunity to him to produce testimony and to review any adverse finding we are of the opinion, that his rights were not determined without due process of law. He had notice of the proceeding and indeed appeared before it to contest its jurisdiction. Having thus had an opportunity to raise before a competent tribunal, the administrative questions he now seeks to raise in this court he cannot justly complain when this court holds all such administrative questions as to the amount, scope and lien of the tax questions which he could have raised before such tribunal, are settled by its decree, and cannot be attacked collaterally."

I submit that this finding is a result of a misconception on the Court's part of the effect of *Stanley* v. *Board of Supervisors,* 121 U. S. 550, of the character of this case and of the nature of the adjustment commissioners.

(1) *Stanley* v. *Board of Supervisors,* is not an authority in the case at bar.

Stanley v. *Board of Supervisors,* 121 U. S. 535 is not an authority in the case at bar. This was a suit brought to recover taxes which had been paid. The court held that such a suit, under certain circumstances, was a collateral attack upon the action of the Assessment Commissioners and concluded its opinion with these words:

> "If the assignors of the plaintiff had any

> just ground of complaint to the assessment *as excessive* they should have pursued the course provided by statute for its correction *or resorted to equity to enjoin the collection of the illegal excess upon the payment or tender of the amount due upon what they conceded to be a just valuation.*"

This was said in a case where the complaint was as to *the amount* of the tax. In the case at bar the objection is as to the validity of the tax and the validity of the lien.

This case, therefore, is not an authority where the proceeding is, as in the case at bar, brought by a non-resident in equity to remove a cloud created by the tax *as a substitute for a writ of certiorari in the State Court.* This suit in equity is as direct an attack as can be made in the federal courts and the appellant is entitled under the laws of the United States to seek his relief in the federal courts.

The distinction is clearly apparent from a consideration of the case of *Balfour* v. *City of Portland,* 28 Fed. 738 and *California and O. Land Co.* v. *Gowen,* 48 Fed. 771 decided by the same judge. In the first case he held that a suit to recover taxes paid was a collateral attack upon the assessment, but he also held a suit to enjoin the collection of this tax so far as it was based upon an improper valuation of the property could have been maintained by the plaintiffs upon the ground of fraud—a recognized head of equity jurisdiction and in the second case he held:

> "By section 2778 of the Compilation of 1887, the county judge, county clerk and assessor are made a board of equilization to correct assessments, and increase or reduce the valuation of property assessed. In my

judgment, this board is merely a part of the machinery of assessment. No relief can be had against *a mere* overvaluation of property incident to the infirmity of human judgment, except by an appeal to it."

"In the case *of an illegal assessment, relief may be had in equity without resorting to the board. But the party aggrieved in such case may present his case to the board, without forfeiting his right to go into equity.* An appeal to this board is in no sense an election to pursue a remedy at law. It is merely the last act in the matter of assessment."

(2) *Case at bar under a well recognized head of equity jurisdiction.*

The case at bar is brought under a well recognized head of equity jurisdiction, aside entirely from that arising out of the inability of a federal court to grant relief at law in that it cannot issue a writ of certiorari, and that is to remove a cloud upon title. That the adjustment constitutes a cloud on title admits of no discussion. Equity having jurisdiction therefore, because of its power to relieve against clouds on title, has jurisdiction of the whole cause and will consider *any* illegality which may appear in the assessment of the tax. No authority is necessary to sustain the proposition that equity once having jurisdiction of a cause upon any grounds decides all questions legal or equitable, administrative or otherwise.

Pomeroy Equity Jurisprudence, 3 Ed. Vol. 1. sec. 231, to 241, sec. 181.

In *Bullock* v. *Adams,* 20 N. J. Eq. 367, the court said:

"Where a court of equity obtains jurisdiction for equitable purposes, it will retain it to give full relief, whether legal or equitable,

> as to all purposes relating to the subject matter of the bill, even though it be required to give relief in matters which would not have been proper subjects of equitable interposition if they alone were the original subject of relief."

In *Decker* v. *Caskey,* 1 N. J. Eq. 427 it is said:

> "It is the duty of this court never to do justice by halves, to beget business for another court, or, when the cause is fairly within its jurisdiction, to leave open the door for future litigation here or elsewhere."

In *Mosser* v. *Pequest Mining Co.,* 26 N. J. Eq. 200, it is said: "A court of equity having jurisdiction for one purpose, will retain it for all purposes, and do complete justice as between the parties."

In *Mellick* v. *Cross,* 62 N. J. Eq. 545, it is said: "A court of equity having obtained jurisdiction of the cause will settle the whole controversy."

In *Parker* v. *Boyd,* October Term, 1912, it was held by this Court that the federal court once having acquired jurisdiction in equity determines all questions legal and equitable and does full justice between the parties.

If the decision of the Circuit Court of Appeals be correct it would result in Leary, a non-resident, being obliged to sue out his writ of certiorari in the Supreme Court of the State to correct those errors which the courts below have refused to consider and also to maintain his bill in equity in the federal court to correct those alleged errors which those courts have considered. This cannot be the law.

Once a cause is in a court of equity, equity will do full and complete justice.

In *Zettell* v. *Meyers,* 19 Gratt. 62, it was held: "That a suit in equity must include the entire trans-

action, plaintiff cannot divide it and sue in equity for a part and at law for a part."

The Circuit Court of Appeals for the 8th Circuit, in *Bassett* v. *Utah Copper Co.,* 219 Fed. 811, expressly refused to hold in a suit at law to recover taxes paid under protest that the judgment of the county board of equalization was judicial in character and thus conclusive.

(3) *The Report of the Adjustment Commissioners is in no sense judicial or conclusive.*

But the report of the Adjustment Commissioners was in no sense judicial nor conclusive. The report is made otherwise by the act itself.

Section 17 provides as follows:

> "And such purchaser, his heirs, legal representatives or assigns shall take a good and sufficient title to the property sold in fee simple, absolute free from all encumbrances (except taxes, assessments water rates levied after the confirmation of said report and except sewer assessments made and levied under the provisions of an act entitled, 'An act to authorize cities to construct sewers and drains, and to provide for the payment of the cost thereof,' approved March eighth, one thousand eight hundred and eighty-two, when the sewer assessment on the land sold was not included in the report of the commissioners, of which the said deed shall be *presumptive evidence* in all courts and places, and in any proceedings or actions to be by such purchasers, heirs, legal representatives, or assigns taken, prosecuted or defended for the recovery of the possession of the property so sold as aforesaid, or in the establishment or defense of his or their title, shown as aforesaid by such deed, the title shall not fail or be defeated by reason of any irregularity or formal defect in the procedure taken under this act, upon which the

sale shall have been made or the title conveyed as aforesaid, or by reason of any illegality in fixing and adjusting the tax, assessment and lien, to enforce which said sale was made, or in the proceeding for collecting the same; *provided, the property sold was liable at the time such tax, assessment and lien was fixed and adjusted, to the imposition of a tax, assessment or lien in respect of the purposes for which such tax, assessment and lien was fixed and imposed, and it does not appear that any substantial injury was done to the owner of the property by reason of the irregular or illegal manner or method of fixing, imposing or collecting said tax, assessment and lien.*"

By force of this legislation the Legislature has expressly provided that the Adjustment Commissioners' report shall not be conclusive. Therefore, the owner of this property might, if he desired, permit the property to be sold and then in proceedings to recover possession he might, as against the purchaser, set up the fact that the land was not liable to the imposition of the tax, or that it was not liable to the imposition of the tax at the time the tax was adjusted, and this involves all questions of expiration of lien by limitation, because if the lien had expired at the time the tax was adjusted the property was not at that time liable to the imposition of a tax in respect of the purposes for which the tax was fixed and imposed and even irregular or illegal methods of fixing, imposing or collecting such tax might be taken advantage of by the owner unless it appeared that no "*substantial "injury was done to the owner of the property by "reason of the irregular manner or method of fixing, "imposing or collecting said tax, assessment and "lien.*"

If the position of the appellant be correct substantial injury was done.

If the property owner can resist the enforcement of the deed which will be the result of the sale now sought to be enjoined, surely he can for the same reasons enjoin the sales which will result in the giving of the deed, thus creating a cloud upon his title.

The Adjustment Commissioners are a taxing body of the first instance created by the statute for the purpose of fixing a new lien in place and instead of arrearages existing up to the time of their action and they are to do this section 4:

> *"without regard to any supposed want of "jurisdiction, invalidity, irregularity or de- "fect in any of the proceedings had for the "levying, imposing, or confirming of any of "said taxes, assessments or water rates so "in arrears."*

They fixed a lump sum which said sum

> "so fixed, determined, certified and confirmed in each case shall thereupon become and be a valid and binding tax, assessment and lien on the lands so designated, in lieu and instead of all outstanding claims of the city for arrearages of taxes, assessments or water rates levied or confirmed or attempted to be levied or confirmed prior to the making of the said report and shall be a valid lien on said lands having priority over all other liens, claims or demands whatsoever except taxes, assessments or water rates levied after the making of the said report."

The title of the act is as follows:

> "An act concerning the settlement and collection of arrearages of unpaid taxes, assessments and water rates or water rents in

> cities of this state and imposing and levying a tax, assessment and lien in lieu and instead of such arrearages and to enforce the payment thereof and to provide for the sale of lands subjected to future taxation and assessment."

The confirmation by the Circuit Court does not make the proceeding judicial.

In *Rutherford v. Meginnis,* Supreme Court of New Jersey, 43 Vr. 445, resting upon the decision of the Court of Appeals in *East Orange v. Husse,* 41 Vr. 244, in dealing with this act and the participation of the Circuit Court in the adjustment proceeding said:

> "In proceedings of this character the Circuit Court merely takes part in perfecting a municipal proceeding which, regardless of the nature of the agencies that take part in it, remains a *municipal proceeding."*

Under the statute the property owner has no part in bringing the matter of the adjustment of his taxes before the Commissioners.

The result is that the Adjustment Commissioners stand in exactly the same relation as the original assessment commissioners, and their action has exactly the same effect as the action of a taxing board of the first instance of a municipality. It is true that their action may be reviewed in a state court by certiorari, this not being, however, an absolute right, but resting in the absolute uncontrolled judgment of the Supreme Court of the State. The award of the writ is expressly forbidden unless the applicant gives bond to pay the tax. In this case this would mean a bond of $500,000, thus converting what before was a mere charge on the land, which may not be worth one-tenth of the

tax, into a personal obligation. This results in an absolute denial of a review in the State Courts. If it be the law that a non-resident must in matters of taxation seek his relief in the state court by certiorari under these circumstances rather than in the federal court the conclusion that the court has arrived at in this case is correct, but it is submitted that under the authorities a non-resident has an election either to endeavor to get his remedy by certiorari in the State court or to enjoin the collection of the illegal tax in the federal court in equity and that the proceeding in equity in the federal court *is a substitute for the proceeding in the state court by certiorari* and just as an attack upon the action of the Commissioners by certiorari would be a direct and not a collateral attack *so an attack upon the action of the commissioners in equity in the federal court, where certiorari is not available, is a direct and not a collateral attack.*

There can be no question, but that if a writ of certiorari could be issued by a federal court Daniel J. Leary could have sued out his writ in the federal court and reviewed the action of the Adjustment Commissioners just as if he had sued out a similar writ in the state court and the objections which the court in the case at bar has refused to consider, the court under such a writ would have considered. Inasmuch as the reason that a non-resident can intervene on the equity side of the federal court is because there is no adequate remedy on the law side, it is submitted that in a suit for an injunction exactly the same objections can be considered to a tax imposed by a municipal body as if the proceeding were upon the law side upon certiorari.

Each one of the objections made to the validity of this adjustment were before the Adjustment

Commissioners, including those which the court below in its opinion has refused to consider. They held at the outset that they had no right to consider any legal objections, not only legal objections involving the territorial questions raised, but all of the legal objections raised in the assignment of errors in the case at bar. They held that they had no power to consider anything except the question of the value of the land and this was all that they would consider. He did not apply for a writ of certiorari because he was a non-resident and elected to pursue his remedy in equity in the federal courts.

In the testimony (p. 78):

> "Q. I ask when you went before the Board of Adjustment Commissioners on the return of No. 112 did you then argue any of the points? A. The legal objections—no. The Board held that it had no jurisdiction. The Board has held from the beginning of my connection with this case that it had no time to deal with the legal objections.
>
> "Q. How has it held that? A. By refusing to allow me to argue the legal objections that I raised."

All of the objections which are now made are legal objections which were there raised.

(p. 77.)

> "Q. Do you recall whether or not you argued before the Board of Adjustment Commissioners the several points specified in this paper of objections? A. As to the legal objections to the taxing of the land—yes. My recollection is that I stated those legal objections and the Board immediately ruled that they had no power to consider them. I was not allowed to make any further argument upon them. I did not argue anything

before the Circuit Court until after the petition for removal had been filed and approved and the order of removal denied."

(p. 77.)

"The question as to the difference in lines (having reference now to the imposition of a tax upon the lands as they now exist although the taxes were originally imposed upon lands of different area) was before the Adjustment Commissioners because I brought it before them myself."

(p. 76.) Mr. Dixon for the City offered in evidence the brief that I filed with the Board of Adjustment Commissioners in which I stated all of these objections.

Not only is the decision in *Rutherford* v. *Meginnis,* 43 Vr. 444, authority for the proposition that the proceeding of the Adjustment Commissioners is a municipal proceeding and the intervention of the Circuit Court does not change it into a judicial proceeding, but the Circuit Court itself in the case at bar, although it approved the bond and petition for removal to the federal court when the proceedings were pending before the Circuit Court, refused to permit the removal upon the ground that the proceeding was not a civil proceeding within the meaning of the federal statutes. Having taken that position in the case at bar in the state courts the City cannot now say that the proceeding before the Adjustment Commissioner was a civil proceeding and judicial in character.

Again I draw the court's attention to the fact that the attack now made upon this adjustment commissioners' report is not collateral *but is as direct as by the process in the federal court it can be.*

That the complainant has not availed himself of remedies provided for by the State does not deprive him of relief in the Circuit Court, or the equity side.

Because the appellant might have applied to review the proceedings of the Adjustment Commissioners by certiorari is he deprived of his remedy in the Federal courts?

In *Taylor* v. *L. & N. R. R. Co.,* 88 Fed. 350, Circuit Court of Appeals, Sixth Circuit, before Judges Taft, Lurton and Severens. Judge Taft said:

> "It is argued on behalf of the defendants that there is an adequate remedy at law which will present a multiplicity of suits, and that is by certiorari in the state courts. Such proceeding is in its nature supervisory and appellate. Circuit Courts of the United States are limited in their use of the writ of certiorari to those cases in which it is necessary for the exercise of their jurisdiction. Rev. St. U. S. sec. 716. Ex Parte Vallandigham, 1 Wall. 243. In other words the writ can only be used as ancillary to some other jurisdiction conferred by law; and, as no supervisory or appellate jurisdiction has been conferred upon circuit courts of the United States to revise the proceedings of special tax tribunals it would seem clear that the circuit court below could not, on its law side, have furnished a remedy by certiorari to modify the assessments made by the defendants. The ordinary rule is that *statutory remedies at law furnished by a state in its own courts will not oust the equitable jurisdiction of the federal courts of equity.* This has been laid down with emphatic clearness by Mr. Justice Harlan speaking for the Supreme Court, in *Smyth* v. *Ames,* 169 U. S. 466, 516, 18 Sup. Ct. 418. In that case it was argued that equitable jurisdiction to enjoin the action of a state railroad commission from putting into force an order fixing confiscatory railroad freight rates was prevented by the circumstance that the state had furnished a special rem-

> edy at law in the state supreme court for the revision of unreasonable action by the commission. The argument was not successful. Mr. Justice Harlan said: 'One who is entitled to sue in the federal circuit court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court and he cannot be deprived of that right by reason of his being allowed to sue at law in the state Court on the same cause of action."

In Kansas City, *Ft. S. & M. R. C.* v. *King*, Circuit Court of Appeals, 6th Circuit, 120 Fed. 614, before Judges Lurton, Day and Severens, Judge Day, speaking for the Court, said:

> "A preliminary question is made as to the right of a court of equity to entertain jurisdiction of the bill for injunction in this case. The objections raised in this proceeding to the legality of the assessment do not appear upon the face of the proceedings, but arise because of facts set forth in the bill, which show, as is alleged, unlawful discrimination in the assessment of the property of the complaint. This tax, by the law of Tennessee, becomes a lien upon the property. It creates an apparently valid incumbrance which casts a cloud upon the title. We think it is settled that in such case the federal courts in equity may entertain a bill to inquire into the validity of the proceedings, and remove the cloud if the assessment shall turn out to be illegal. *Ogden City* v. *Armstrong*, 168 U. S. 224, 18 Sup. Ct. 98. Upon this branch of the case nothing need be added to the full discussion of the subject in the opinion of Judge Taft, speaking for this court in *Taylor* v. *Railroad Co.*, 88 Fed. 350."

In *Gregg* v. *Sandford*, Circuit Ct. of Appeals, 3rd

Circuit, 65 Fed. 151, Judges Acheson, Butler and Wales, Judge Acheson speaking for the Court, said:

> "Having regard to general principles, we think this case presents clear ground for equitable redress aside from the mere illegality of the tax. The proceeding for the settlement of taxes here is under the provisions of the act of March 30th, 1811, the twelfth section of which provides that the amount or balance of every account, settled agreeably to this act due to the commonwealth, shall be a lien from the date of such settlement on all the real estate of the debtor within the commonwealth. The bill alleges that the Adams Express Company is the owner of valuable real estate in the state of Pennsylvania, within the cities of Philadelphia and Pittsburg, upon all of which the settlement of taxes *will create an apparent lien and a cloud*, and prevent the company from selling or disposing of the same until all the litigation concerning said taxes shall have been ended. *Now, to prevent a threatened cloud upon the title to real estate or to remove it if existing is an acknowledged head of equitable jurisdiction.*"

This Court, speaking through Mr. Justice Bradley in *Union Pacific Railroad v. Ryan,* 113 U. S. 516, 28 L. Ed. at p. 1098, said:

> "It cannot be denied that bills in equity to restrain the collection of taxes illegally imposed have frequently been sustained. But it is well settled that there ought to be some equitable ground for relief besides the mere illegality of the tax; for it must be presumed that the law furnishes a remedy for illegal taxation. It often happens, however, that the case is such that the person illegally taxed would suffer irremediable damage or be subject to vexatious litigation,

> if he were compelled to resort to his legal remedy alone. For example, if the legal remedy consisted only of an action to recover back the money after it has been collected by distress and sale of the taxpayer's lands, the loss of his freehold by means of a tax sale would be a mischief hard to be remedied. *Even the cloud case upon his title by a tax under which such a sale could be made, would be a grievance which would entitle him to go into a court of equity for relief.* Judge Cooley fairly sums up the law on this subject as follows: 'To entitle a party to relief in equity against an illegal tax, he must by his bill bring his case under some acknowledged head of equity jurisdiction. The illegality of the tax alone or the threat to sell property for its satisfaction cannot of themselves furnish any ground for equitable interposition. In ordinary cases a party must find his remedy in the courts of law, and it is not to be supposed he will fail to find one adequate to his proper relief. Cases of fraud, accident or mistake, *cases of cloud upon* the title to one's property and cases where one is threatened with irremediable mischief may demand other remedies than those the common law can give, and these in proper cases may be afforded in courts of equity.'"

In *Johnston* v. *Kramer Bros. & Co.,* 203 Fed., 733, it is said:

> "It seems to be well settled that a court of equity has jurisdiction to remove, as a cloud title, any deed, grant, or other muniment of title, valid upon its face, the invalidity of which can only be shown by extrinsic evidence. It is said: 'Equity interferes to remove clouds upon title, because they embarrass the owner of the property clouded, and tend to impede his free sale

and disposition of it. A cloud upon title is, in itself, a title or incumbrance, apparently valid, but in fact invalid. It is something which nothing else being shown, constitutes an incumbrance upon or a defect in it; something which shows prima facie the right of a third party, either to the whole or some interest in it, or a lien upon it. The doctrine relating to cloud upon title is founded upon true principles of equity jurisprudence, which is not merely remedial, but is also preventive of injustice. If an instrument ought not to be used or enforced it is against conscience for the party holding the same to retain it, since he can only do so with some sinister or wrongful design * * *. If it is a deed purporting to convey lands, which creates an apparent encumbrance, its existence in an uncanceled state necessarily is calculated to throw a cloud over the title.'" Note to *Busbee* v. *Macy*, 85 N. C., 329, in Remedies by Selected Cases Mordecai, 184; *Rich* v. *Braxton*, 158 U. S., 375; 15 Sup. Ct., 1006, 39 L. Ed., 1022.

In *Ogden City* v. *Armstrong*, 168 U. S. 224, 238, 18 Sup. Ct. 98, 103, 42 L. Ed. 444 it is said:

"One branch of equity jurisdiction is the removal of apparent clouds upon the title, which may diminish the market value of the land and possibly threaten the loss of it to the owner * * *. When the illegality or fatal defects does not appear on the face of the record, but must be shown by evidence aliunde, so that the record would make out a prima facie right in one who should become a purchaser, and the evidence to rebut this case may be lost, or become unavailable from death of witnesses, or *when the deed given on a sale of the land for the tax would be presumptive evidence of a good title in the purchaser so that the purchaser might rely*

> *upon the deed for a recovery of the land until the irregularities were shown,* courts of equity regard the case as coming within jurisdiction, and have extended relief on the ground that a cloud on the title existed or was imminent." *Acord* v. *West,* Poc. Corp. (C.C.) 156 Fed. 989.

In the case of *Ritterbusch* v. *Atchison,* T. S. F. Ry Co. Circuit Court of Appeals, 8th Circuit, before Sanborn, Hook and Smith, Circuit Judges, 198 Fed. p. 46. The Court sustained an action to enjoin the collection of state taxes upon the property of the Atchison, Topeka & Santa Fe Railway Company "which *was fixed and levied by the State Board of Equalization.*" On page 48 it appears that the objections to the tax were various, some administrative and some otherwise. Yet the bill was maintained, and all of the alleged errors were examined and ruled upon by the court. And the Court said:

> "And where a complainant claims and shows by the averments in his bill that the entire tax is void, or that a substantial part of it is inequitable, and it is impossible to determine what portion, if any, is valid, no tender or payment of any part of the taxes, and hence no averment of any such tender, is essential to sustain a bill to enjoin their collection." *Fargo* v. *Hart,* 193 U. S. 490, 48 L. Ed. 761.

The judgment of the Board of Equalization was not considered in this case as conclusive. And the Court examined into all the objections although there was a remedy by appropriate proceedings in the State court,and although the Board of Equalization had much greater judicial power than the adjustment commissioners in New Jersey which have

none. The extent that the court will get to examine into the irregularities of municipal corporations where there is the requisite non-residence is indicated by the case of *Abbott* v. *City of Milwaukee*, 205 Fed. p. 933.

And to the same effects *Cottle* v. *Union Pacific Railway Co.*, Circuit Court of Appeals, 8th Circuit 201 U. S., p. 39.

In *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S., p. 1, 43 L. Ed. at p. 346, this Court said:

> "This court has repeatedly declared in affirmance of the generally accepted proposition that the remedy at law, in order to exclude a concurrent remedy at equity, must be as complete, as practical, and as efficient to the ends of justice and its prompt administration as the remedy in equity. *Citing Boyees' executors* v. *Grundy*, 3 Pet. 210, 215; 7 L. Ed. 655, 657; *Phoenix Life Ins. Co.* v. *Bailey*, 13 Wall, 616;. 621; 20 L. Ed. 501, 503; *Kilborun* v. *Sunderland*, 130 U. S. 505, 514, 32 L. Ed. 1005, 1009; *Tyler* v. *Savage*, 143 U. S. 79, 95; 36 L. Ed, 82, 89."

In *Toledo Traction, Light & Power Co.*, v. *Smith*, 205 Fed. 643, a suit was maintained to enjoin persons from acting as officers of corporations although there was a remedy by quo warranto but the Court said:

> "In the first place, the statutes of Ohio do not award an action in quo warranto as a matter of right on demand of a party claiming an interest, but devolve upon either the Governor, Supreme Court, General Assembly, Attorney General, or prosecuting attorney the initiative for such an action when title to a private office is in question. It would seem to us that the remedy by quo

> warranto is therefore not quite complete, where the party interested must appeal to the discretion of some other person or body."

So in the case at bar if the appellant had desired to review the report of the Adjustment Commissioners he would have had to apply to the Supreme Court of the State for a writ of certiorari which court might or might not *in its discretion* grant such writ. If the court refused to grant the writ of certiorari there was no review. No writ of error would go to the Court of Appeals and no writ of error to the Supreme Court of the United States, for it is held in New Jersey that the right to grant a writ of certiorari is entirely discretionary, subject to no review. The writ itself would have to be granted before there could be an argument upon the merits.

Certiorari to review the proceedings of inferior tribunals is not a writ of right, but is issued in the sound discretion of the court. Matter of Highway, 3 N. J. L. 1026; *Ludlow* v. *Ludlow*, 4 N. J. L. 387; *State* v. *Woodward*, 9 N. J. L. 21; *Haines* v. *Campion*, 18 N. J. L. 49; *State* v. *Green*, 18 N. J. L. 179; *State* v. *Wood*, 23 N. J. L. 560; *State, Vail Pros.* v. *Bentley*, 23 N. J. L. 532; *State* v. *Clerk*, 25 N. J. L. 354; *State, Zabriskee pros.* v. *Hudson City*, 29 N. J. L. 115; *State, Vanderbeck, pros.* v. *Blauvelt*, 34 N. J. L. 261. But he also would have had to give a bond to pay the tax, thus assuming as a personal debt that which before was a mere charge on property. He would have had to assume a debt of $500,000 when the property may not be worth one-tenth of that sum.

If a writ of quo warranto is not an adequate remedy in that its award rests in the discretion of some person other than the appellant so a writ of

certiorari resting in the discretion of a court and awarded in any event after giving this bond is not an adequate remedy.

In *Graves* v. *Ashburn*, 215 U. S. 329, 54 L. Ed. 217, it was held, reversing the Circuit Court of Appeals which dismissed the bill of complaint upon the ground that the complainant had a complete remedy at law, that the court would direct the cancellation of a deed as a cloud on title, although the objections were legal.

And see *Cummings* v. *Nat. Bank*, 101 U. S. 153, 156, 25 L. Ed. 903, where this court sustained a bill to enjoin the collection of a tax not imposed in accordance with the constitutional provisions of a state.

In *Fargo* v. *Hart*, 193 U. S. 495, 48 L. Ed. 761, a bill was filed to enjoin the auditor of the State from certifying an assessment to the auditors of the several counties in the State. The tax was upon personal property. The allegation was that the assessments would result in an unconstitutional interference with commerce among the states and that they were also contrary to the Fourteenth Amendment. The court below denied relief. The Supreme Court reversed, and Mr. Justice Holmes, writing the opinion of the court, sustained the jurisdiction in equity and further held that tender *is not a prerequisite* to injunctive relief against an assessment for taxation made upon unconstitutional principles.

And in New Jersey in *Ludington* v. *City of Elizabeth*, 7 Stew., p. 357, it was said:

> "Sales of land under municipal assessments based on an unconstitutional statute, and sales, for taxes, to the city for a term of years exceeding that limited by the char-

> ter, are clouds on the title of such lands which this court may remove."

In *Kirkpatrick* v. *Mayor and Council of the City of New Brunswick,* 13 Stew. 46, affirmed 14 Stew. 347, a bill was brought to quiet title to the land and to remove encumbrances of tax sales. *The averment of the bill was that the sales were all made after the expiration of the lien given by the charter for those taxes and therefore ultra vires, and consequently were and are mere nullities.* This case is important because one of the questions which the Circuit Court of Appeals refused to consider is the question of the expiration of the lien although it has been held in New Jersey that if the lien of the original taxes had expired the Adjustment Commissioners had no power to create a new lien and their action in so doing was illegal and void.

In *Bogert* v. *Elizabeth,* 27 Eq. 568, it was held that a suit to set aside a tax deed given under a void sale might be entertained, and *delay in the land owner in allowing time for bringing a certiorari to pass, is no bar to the exhibition of such a bill.*

Cases in which the remedy at law is adequate and therefore no relief can be had in the federal court in equity has an example in *Singer Sewing Machine Co.* v. *Benedict,* Supreme Court of the United States, 229 U. S. 481:

> "We refer to these cases not as defining the jurisdiction in equity of the circuit court, for that they could not do, but as showing that the Colorado statute gave to one who should pay illegal taxes a right to recover back from the county the money so paid. *This right was one which could be enforced by an action at law in the circuit court, no*

> *less than in the state courts, if the elements of Federal jurisdiction, such as diverse citizenship and the requisite amount in controversy, were present.* Thus it will be perceived that, if the taxes in question were illegal and void, as asserted, the company had a remedy at law."

This is a clear indication that if the remedy was not such as could have been pursued in the federal courts a non-resident could have brought his suit in equity.

(5) *Clear jurisdiction in equity to remove cloud upon title.*

In the case at bar the deed given under the Martin Act is presumptive evidence of good title and would divest the appellant of his rights in the property.

In *Scofield* v. *Lansing,* 17 Mich. 437, the court said:

> "Where by the charter of a city, a certain tax was declared to be a lien upon premises, such lien constituted a cloud on title."

If tax deed is presumptive evidence equity interferes.

> *Northern Pac.* v. *Carland,* 3 Pac., 134;
> *Ogden* v. *Armstrong,* 168 U. S., 225.

In *Wheeler* v. *City of St. Paul,* 5 Minn., 95, it was held in an action to vacate a tax sale and cancel a certificate issued thereon as a cloud upon title, where defendant objected that as their invalidity was apparent, the court could not take cognizance of the action, that as General Statutes, Chap. 9493, provides that a tax deed issued under such a certificate shall be prima facie evidence of

the assessment and sale plaintiff was entitled to the relief sought.

To the same effect is *Morrison* v. *City of St. Paul*, 5 Minn., 108.

Equity will interfere to prevent a threatened cloud upon the plaintiff's title by a sale of lands under a void municipal assessment or by the issue of a deed after such sale where the defect complained of is not merely formal but affects complainant's constitutional rights.

> *Leslie* v. *City of St. Louis*, 47 Mo. 474;
> *McPike* v. *Penn*, 51 Mo. 63;
> *Scott* v. *Onderdonk*, 14 N. Y., 9;
> *New York & H. R. R. Co.* v. *Morrisania* 7 Hun. 652;
> *Michael* v. *City of Molnalke*, 18 Wis. 92.

An injunction will issue to restrain a sale that will throw a cloud upon complainant's title though no title would in fact pass to the purchaser at the sale.

> *Volger* v. *Montgomery*, 54 Mo. 577.

In *Kansas City* v. *King*, 120 Fed., 614, the Circuit Court of Appeals, 6th Circuit, Day. J. said:

> "Where the assessment of real property by a state is valid on its face and the taxes levied on such assessments become a lien apparently valid, which creates a cloud upon the title to the property, the Federal Court of Equity has jurisdiction of a suit to inquire into the validity of the proceeding and remove the cloud by enjoining the collection of the tax if the assessment shall be shown to be illegal."
>
> *Third Nat. Bank of Pittsburg* v. *Mylin*, 76 Fed. 385.

41

Any person whose rights in lands may be affected has the right to file a bill to remove the cloud.

Secore v. *Singleton*, 35 Fed., 377 (stockholders of a corporation).

McKinnen v. *Schaffer*, 74 Cal. 614, 16 Pac., 509;
Stoddards v. *Bunge*, 53 Cal., 394;
Pierce v. *Felter*, 53 Cal., 18 (lessee.)
Lore v. *Boyston*, 57 Ark., 589, 22 S. W. 341, (mortgagee).

The complainant in the case at bar is the owner of a lease from the State of New Jersey which entitled him to possession of the land and he is entitled upon the payment of certain sums to purchase the lands and get titles in fee. The statute under which the adjustment is made makes the adjustment a first and paramount lien prior to the rights of the complainant and sales under the adjustment have the effect of divesting the rights of the complainant and deeds given after the sales are evidence of rights of the purchaser to take possession of the said lands and premises and to hold the same in fee simple.

The effect of the sale would be to divest the complainant of all his interest in the lands and the effect of the taxes is to cast a cloud upon the title of the complainant and prevent him from utilizing his lands, and is also to subject him to irreparable injury.

If the tax is a cloud upon his leasehold suit may be brought to remove such cloud.

In *Fargo* v. *Hart*, 193 U. S., 495, the property involved was personal property.

(6) *To hold that the appellant was obliged to resort to the state courts to review the determination of the adjustment commissioners notwithstanding his non residence would be to deprive him of his property without due process of law and would be to deny him the equal protection of the law.*

The statute of New Jersey provides:

> "No writ of certiorari shall be allowed to contest or set aside any tax, assessment and lien fixed or determined by the said commissioners, or to set aside any proceeding under this act to collect the same, unless the party applying for such writ shall give a bond, with approved security, conditioned for the payment of so much of said tax, assessment and lien as shall be ascertained to be justly payable, with interest and costs, nor unless application be made therefor within six months from the confirmation of said report."

So that before the Supreme Court of the State would listen to an application for a writ of certiorari, which they might or might not award in absolute discretion, the complainant would have to put up a bond of approximately half a million dollars and would have been obliged to assume personally the obligation of paying these taxes.

His position from the beginning has been that the taxes are wholly illegal. The land may be worth but a small portion of the amount of taxes; the taxes at the present time are not personal obligations of the complainant, but are mere charges upon the land. If the taxes were to be sustained the complainant might elect to let the land go. Under the State law he has that right. He has the right to have the question of the legality of the taxes determined by a judicial tribunal and

to have by that judicial tribunal all of the questions which involve the legality of the taxes reviewed. To compel him as a condition of that review to assume the personal obligation to pay the taxes irrespective of the value of the land is to deprive him of his property without due process of law.

It would require, as in the case at bar, a bond of half a million dollars. There are many owners of property who could not give any such bond which must be "with approved security." There may be others who can. Again if the taxes were small there would be less difficulty in giving the bond.

The result is that the ability to secure a review in the State tribunal depends upon the amount of the tax, the size of the bond, the value of the property, the financial worth of the taxpayer. This results in the denial of the equal protection of the law.

It is as if upon a suit being started against a defendant the State should provide that he should not be heard in his defense unless he gave a bond with approved security to pay the judgment. This, of course, would be unconstitutional and void.

In this tax case the State says:

> "You shall not secure a review in our courts; we will proceed against you and fix a lien upon your property and sell your property and you will have no right to review our assessment, unless you shall give a bond with approved security to pay the amount of the tax."

The proceeding by the State to assess these lands and create his lien is in the nature of a suit against the taxpayer. In many states the law provides for a suit; the taxpayer is really the defendant and it is submitted that the condition

imposed by the State law upon him before he can be heard in the courts of the State, result in the taking of his property without due process of law and in a denial of the equal protection of the law.

Certainly where the right to review by certiorari hedged around by such onerous conditions rests in the absolute discretion of the Supreme Court it cannot be said that the remedy at law in the State tribunal is adequate. If the remedy be not adequate it cannot be said that the appellant could have proceeded in the state tribunal to have determined those questions which the Courts below have refused to consider.

Finally.

It is insisted that it was the duty of the Circuit Court and the Circuit Court of Appeals sitting in equity in this suit to determine each and every of the questions raised. That the appellant being a non-resident was entitled to have all of his rights settled and determined in the federal courts. That the appellant is not deprived of such right by reason of the fact that under the state law there might have been a writ of certiorari issued to review the report of the adjustment commissioners. That this suit in equity in the Federal Court is a substitute for a writ of certiorari in the state court. That inasmuch as the state court upon certiorari would have had to consider every one of the questions, the federal court sitting in equity must consider each one of the questions. That this case in equity comes under the recognized head of equity jurisprudence, to remove a cloud on title and that once a court of equity has acquired jurisdiction it determines all questions equitable or legal. That inasmuch as the court below should have considered each one of the points raised each one of the points raised is open for determination in this court.

BRIEF OF THE ARGUMENT ON THE MERITS.

I.

The lands are not taxable because the effect of the transfer held by the appellant is that of lease and there is no provision of law under which the taxes for the non-payment of which the lands are about to be sold can be levied.

The instrument in the case at bar is a lease and not a grant of a fees.

The lease was given under the act of the Legislature of the State of New Jersey, approved March 31st, 1869, laws of 1869, page 1017, and the Supplements, General Statutes, N. J., p. 2786. This statute provides:

> "That in case any person or corporation who by any legislative act is a grantee or licensee, or has such power or authority, or any of his, her and their representatives or assigns shall desire a paper capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, conveying the land in the proviso to the third section mentioned whether under water now or not, and the benefit of an express covenant, that the State will not make or give any grant or license power, or authority affecting lands under water in front of said lands, then and in either of such cases, such person or corporation, grantee or licensee, having such grant and license, power or authority, his, her or their representatives or assigns on producing a duly certified copy of such legislative act to said commissioners, and in case of a representative or assignee also satisfac-

tory evidence of his, her or their being such representative or assignee, and requesting such grant and benefits as in this section mentioned, shall be entitled to said paper so capable of being acknowledged and recorded, and granting the title and benefits aforesaid, on payment of the consideration hereinafter mentioned; and the said commissioners or any two of them, with the governor and attorney-general for the time being, to be shown by the governor signing the grant, and the attorney general attesting it, shall and may execute and deliver and acknowledge in the name and on behalf of the State, *a lease in perpetuity* to such grantee or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation, upon his, her or their securing to be paid to the State *an annual rental* of three dollars for each and every lineal foot measuring on the bulkhead line, *or a conveyance to such grantee* or licensee or corporation having such grant, license, power or authority, and to the heirs and assigns of such grantee or licensee, or to the successors and assigns of such corporation *in fee,* upon his, her or their paying to the State fifty dollars for each and every lineal foot measuring on the bulkhead line, in front of the land included in said conveyance; provided, that no corporation to whom any such grant, license, power or authority was given by legislative act as aforesaid, in which provision was made for the payment of money to the treasurer of the State for each and every foot of the shore embraced and contained in the act; nor the assigns of such corporation shall be entitled to the benefits of this section; and provided further, that the said commissioners shall in no case grant lands under water beyond the exterior lines hereby established,

or that may be hereafter established, but the said conveyance shall be construed to extend to any bulkhead or pier line further out on said river and bay that may hereafter be established by legislative authority; in case any person or corporation *taking a lease under this section, shall desire afterwards a conveyance of all or any part of the land so leased,* the same shall be made upon payment of the said sum of fifty dollars for every such lineal foot as aforesaid, of the land so desired to be conveyed, the *conveyance or lease* of the commissioners under this or any other section of this act shall not merely pass the title to the land therein described, but the right of the grantee or licensee, individual or corporation, his, her or their heirs and assigns, to exclude to the exterior bulkhead line, the tide water by filling in or otherwise improving the same, and to appropriate the land to exclusive private uses, and so far as the upland from time to time made shall adjoin the navigable water, the said *conveyance or lease* shall vest in the grantee or licensee, individual or corporation, and their heirs and assigns, the rights to the perquisites of wharfage and other like profits, tolls and charges."

This section of the act provides for two distinct classes of conveyances:

First: A grant conveying a fee.

Second: A lease conveying limited rights at an annual rental.

It further provides that in case any person or corporation taking *a lease* under this section shall *desire afterwards* a conveyance of any or any part of the lands *so leased* the same shall be made upon a further payment.

This section only provided for leases or conveyances to persons who were by any legislative grant grantees or licensees.

Section 8 of the act under which the lease in question was made provides as follows:

> "That if any person or persons, corporation or corporations, or associations, shall desire to obtain a grant for lands under water which have not been improved, and are not authorized to be improved, under any grant or license protected by the provisions of this act, it shall be lawful for any two of the said commissioners concurring, together with the governor and attorney-general of the State, upon application to them, to designate what lands under water for which a grant is desired lie within the exterior lines, and to fix *such price, reasonable compensation, or annual rentals for so much of said lands as lie below high water mark, as are to be included in the grant or lease* for which such application shall be made, and to certify the boundaries, and the price, compensation or *annual rentals* to be paid for the same, under their hands, which shall be filed in the office of the secretary of state; and upon the payment of such price or compensation or *annual rentals*, or securing the same to be paid to the treasurer of this State, by such applicant, it shall be lawful for such applicant to apply to the commissioners for a conveyance, assuring to the grantee, his or her heirs and assigns, if to an individual, or to its successors and assigns, if a corporation, the land under water so described in said certificate; and the said commissioners shall, in the name of the State, and under the great seal of the State, grant the said lands in manner last aforesaid, and said conveyance shall be subscribed by the governor and attested by the

attorney-general and secretary of state, and shall be prepared under the direction of the attorney-general, to whom the grantee shall pay the expense of such preparation, and upon the delivery of such conveyance, the grantee may reclaim, improve and appropriate to his and their own use, the lands contained and described in the said certificate; subject, however, to the regulations and provisions of the first and second sections of this act, and such lands shall thereupon vest in said applicant; provided, that no grant or license shall be granted to any other than a riparian proprietor, until six calendar months after the riparian proprietors shall have been personally notified in writing by the applicant for such grant or license, and shall have neglected to apply for the grant or license, and neglected to pay, or secured to be paid, the price that said commission shall have fixed; the notice in the case of a minor shall be given to the guardian, and in case of a corporation to any officer doing the duties incumbent upon the president, secretary, treasurer or director, and in case of a non-resident, the notice may be by publication for four weeks successively in a daily newspaper published in Hudson County, and in a daily newspaper published in New York City."

This section of the act provides for two distinct classes of conveyances, grants or leases at an annual rental.

By an act which was approved March 27, 1871, Laws 1871, page 44, General Statutes, page 2790, it was provided:

"That any riparian owner on tide water * * * who is desirous to obtain a *lease, grant or conveyance* from the State * * * of any lands under water * * * may ap-

> ply to the commissioners * * * who may make such *lease, grant or conveyance.*"

Act approved March 27, 1874, page 103, General Statutes, 2791, provided:

> "That * * * the commissioners * * * to fix * * * the price or purchase money or *annual rental* to be paid by any applicant for so much of lands below high water mark * * * and said commissioners * * * shall *grant or lease* such lands * * * and all such *conveyances or leases* shall be prepared by the said commissioners or their agents at the cost and expense of the grantee *or lessee* therein."

The joint resolution relative to the riparian Commission, approved March 17th, 1870, General Statutes, 2796, provides as follows:

> "Section 1. That the riparian commissioners may and shall, *in all leases,* as well as those authorized by the eighth section as those authorized by the fourth section of the act of last year, relating to the subjects of lands under water, covenant on behalf of the State that the State *will at any time accept* the capital sum of which the annual payment is the interest, at the rate of seven per centum per annum, in lieu of all further annual payments, *and make conveyance of the fee simple and may convey or lease to any exterior line hereafter to be fixed,* and such lease or conveyance under said eighth section and this resolution shall, in all respects, be as effectual to pass all the perquisites of wharfage and other like profits, tolls and charges, as conveyances and leases under the fourth section would be."

In 1871 there was a further act passed approved April 6th, 1871, page 2796, General Statutes, ex-

planatory of the above joint resolution which provided:

"Section 1. That the said commissioners, with the concurrence of the governor and attorney-general, in all cases of application for grants or leases of land now, or at the time of the application, or at the time of the lease or grant, under tide water, and in all cases of application for *grants or leases* of lands which are not now, or shall not at the time of the application, or at the time of the leases or grant be under tide water, and *in all cases of applications for leases or grants* for all or any of such lands, may, notwithstanding the first proviso in the fourth section of said supplement, or any other clause or matter in said supplement contained, *grant or lease, or lease first with a covenant to grant and grant afterwards*, for such principal sum that the interest thereof at seven per centum will produce the rental, such lands, or any part thereof lying between what was, at any time heretofore, the original tide water line and the exterior lines established, or to be established, *and grant or lease* in all cases in which, in their discretion, they shall think such *grant or lease* should be made, such rights, privileges and franchises as they are authorized to grant in cases coming directly within the said fourth section, and enter into the same covenants in the name of the State, in all cases of *grants or leases* where they deem such covenants proper, as are authorized in *grants or leases under said fourth section*, and insert such other covenants, clauses and conditions in said *grants or leases* as they shall think proper to require from the *grantee or lessee*, or ought to be made by the State; provided, that nothing herein contained shall authorize *grants or leases*, in front of a riparian owner to any other than such riparian owner, except upon

> the proceedings and conditions in said supplement provided; and provided also, that the applications for *grants or leases,* and the certificates of said commissioners, governor and attorney-general, may in the cases hereby provided for, vary from the provisions of the said supplement in such manner as to conform to this act, and any party who has already asked for or accepted a *lease or conveyance* may apply for and have the benefits of this act, notwithstanding such former application or former acceptance of a *lease or conveyance.*"

A further act was passed in 1891, approved February 10th, 1891, General Statutes, page 2793, which provides that the Riparian Commissioners or a majority of them may "*sell or let upon such terms as to purchase money or rentals.*"

An act was passed in 1891, approved March 20th, 1891, General Statutes, page 2795, Section 5, which provides:

> "That the riparian commissioners, etc., shall not hereafter be required to give *leases* for lands of the State under water *convertible into grants* upon payment of the sum mentioned therein, but may *sell or let* any of the lands of the State below mean high water mark upon such terms as to *purchase money or rental* and under such conditions and restrictions as to the time and manner of *payment and duration and renewal of any lease,*" etc.

It is clear that under these acts it was the intent of the Legislature to retain the title in the State at the time the lease was made. The statute so declared. Section 1 of the joint resolution, General Statutes, page 2796, provides, that the commissioners will convey *the fee simple upon the*

payment of the principal sum mentioned in the lease and Section 1 of the act of April 6th, 1871, General Statutes, page 2797, provides that the commissioners may *grant or lease* or may *lease first with a covenant to grant and grant afterwards.*

The very words of the statute determine the nature of these conveyances. There could be nothing plainer than these words: *Lease first with a covenant to grant and grant afterwards.*

The lease itself (p. 15) made April 30th, 1881, provides "and being desirous of obtaining a *lease* for the land under water hereinafter *leased* which lie in front of said lands, and having applied to the commissioners appointed under said act approved March 31st, 1869, and to the governor of such state, for a *lease* of the lands hereinafter *leased*, and to fix the price and reasonable compensation and the *annual rent* for the *lands*, or so much of said lands under water as lie below high water mark and may properly be included in the *lease;* and the boundaries and the price, reasonable compensation and the annual *rental* to be paid for the same; and whereas, in compliance with the said application such commissioners, to wit, * * * have agreed to *lease* the lands hereinafter mentioned and determine that the sum of Dollars as the *annual rental* to be paid for such lands under water so designated, and did fix the sum of Dollars as the price of reasonable compensation, on payment of which a conveyance of all or any part of the said land free from rent would under such act be made."

In the lease there were covenants upon the part of the lessees to pay "yearly rent" "and if it shall happen that the *said annual rent* or any part thereof shall at any time hereafter be behind and unpaid for the space of sixty days next after the

same shall become due it shall be lawful without demand for such amount in arrear for said State of New Jersey, by its officers and agents or otherwise, into the said tract of land and every part thereof to enter and distrain all things on said premises for said *annual rent* or such part thereof as shall be behind and unpaid and the distress and distresses there found to take and convey away and detain and keep, or otherwise dispose of according to law *until the said rent* and all arrears thereof and the costs and charges occasioned by the non-payment thereof at the time and in that behalf above mentioned shall be fully paid and satisfied and also that in such case it shall be lawful without demand for such amount in arrear for the said State of New Jersey by its officers or agents or otherwise into the said tract of land *hereby leased* to re-enter and the same and every part thereof *and all improvements and all the rights, liberties, privileges, franchises aforesaid to have, possess and enjoy.*

Under the provisions of this lease in case there is any violation by the lessee the improvements made upon the land become the property of the State of New Jersey; the State re-enters as owner by title paramount.

After the adoption of the resolution of March 17th, 1870, and the act of April 6th, 1871, the Riparian Commissioners could do nothing else than lease with a covenant to convey upon the payment of a further sum. Under the language of the act they *lease first* and *grant afterwards.* The lease states that it is made under this joint resolution.

The Court below held that notwithstanding the language used in the lease and the language of the statutes, the conveyance was a conveyance of a fee

upon a condition subsequent and not a lease (but the taxes were levied and adjustments made not on the theory of a fee upon condition subsequent but a fee absolute) and mainly upon the proposition that it is a lease in perpetuity and the court said (the District Court approved by the Circuit Court of Appeals, p. 206):

> "A lease never conveys all that the owner has. That at some time, and by the very terms of the instrument itself, the estate shall revert to the lessor, his heirs or assigns, is the essence of a lease."

In Chase's Blackstone, page 464, star page 318, it is said:

> "Whatever restriction by the severity of the feudal law, might in times of very high antiquity be observed with regard to leases, yet by the common law as it has stood for centuries, all persons seized of any estate *might let leases to endure, so long as their own interest lasted, but no longer.* Therefore, a tenant in fee simply might let *leases of any duration, for he hath the whole interest,* so also bishop, etc., might have made leases for years or for life, estates in tail or in fee, *without any limitation or control.*"

See also Title "Leases," 18 Am. & Eng. Encyc. of law, p. 611.

And examining the instances cited by Blackstone of grants of fees upon conditions subsequent in each case the intent of the instrument is apparent from its face that the fee was intended to be passed upon conditions subsequent.

Blackstone does not intimate that the parties could not have made a lease which would have exactly the same effect as a grant of a fee upon conditions subsequent, and yet the fee not have passed.

He says that a lease may be made in perpetuity. If the intent of the parties is to make a lease, the conveyance will be a lease. If on the other hand, the intent of the parties is to convey the fee upon conditions subsequent such will be the effect of the instrument.

We may admit that the State might have made this a grant of a fee upon conditions subsequent, if it so chose, but the language of the lease and of the statutes is clear that the State never so intended. It intended to retain to itself the ownership of the land, and in as much as it may under the common law make a lease in perpetuity and the relation of landlord and tenant be established, it must be held to have done so.

A lease almost similar to the one at bar is found in *Folts* v. *Hentley*, 7 Wend., 208, where it was held that the demise to A. B., *his heirs and assigns for such terms of time as he pays rent*, etc., he on his part covenanting for himself and his heirs, etc., to pay rent and perform the covenants *is a perpetual lease.*"

Upon examination of this case it appears that the lease was to the lessor, his heirs and assigns, and that it was for as long as he might pay rent, practically the same as in the case at bar, except that here we have the additional feature, that upon payment of a certain sum, the lessor in the case at bar may obtain the fee. The Court on page 315 says:

> "There can be no doubt but that the *lease is a perpetual one.*"

And see the case of the *State, Morris Canal & Banking Co.* v. *Haight Collector*, 7 Vr., p. 475, in which the court said:

> "Titles to lands cannot be modified indefinitely at the will of private parties; no agreement of theirs can impart to an estate for years the peculiar properties of an estate in fee, *but statutory authority is under no such restriction.* No one will question the power of the Legislature to grant any part of the public domain in fee, the grant to take effect in the future without the intervention of a freehold to support it, or that the same estate could be, in the same way, declared to be exempt from liability to the incidents of curtesy or dower. The entire subject is in the legislative hands, and the only pertinent inquiry is, as to the particular interest, which in this instance, has been placed in the corporation, no matter how anamolous such an interest may be."

In other words, even if at common law there could not have been a lease in perpetuity, yet the Legislature of a state may make a lease in perpetuity retaining in itself the fee and giving to its lessee a leasehold estate.

Pohlemus v. *Bateman,* 31 Vr., 163, New Jersey Court of Errors and Appeals, 1897, was a case in which there was a grant from the State to Pohlemus exactly such a grant as follows the lease in the case at bar after the consideration price for the property is paid. On page 166 the Court of Errors said:

> "The grant by the state must be strictly construed."

And further:

> *"The State as well as the individual may limit the extent of its grant.* The language of the conveyance must measure what passes by it, and the grantee can acquire nothing in excess of that because of the existence of a power to enlarge the grant."

And the Court further said:

> "This language restricts the grant and nothing in excess of it passes to the grantee. His rights under it must be interpreted by the words of the conveyance. He may fill in or otherwise improve the same and appropriate the lands so improved to his exclusive, private uses."
>
> "If he is permitted to appropriate the lands to his exclusive, private uses without filling in or improving, no effect is given to the previous language, and the deed will be given the same effect as if it contained only the provision that he could appropriate the lands to his own exclusive, private uses. Such a construction of the deed under the well settled rules of interpretation is inadmissible. The State made the grant and Bateman accepted it in this form, and it cannot be enlarged beyond the clear meaning of the words used. *Bateman acquired no title to the exclusive use of any portion of the land under water until he filled in and reclaimed or improved it. The grant was only for the purpose of reclamation.*"

The lease at bar contained the same words as construed by the Court in *Pohlemus* v. *Bateman*. Using the language of the Court of Errors and Appeals, page 168: "Bateman acquired no title to the exclusive use of any portion of the land under water until he filled in and reclaimed or improved it. The grant was only for the purpose of reclamation."

It would seem as if this was determinative of the matters involved in the case at bar. If under the lease no title is secured to the appellant, if he cannot maintain trespass, as it was held he could not in *Pohlemus* v. *Bateman*, then how can it be said that he is the owner of the fee of the land so as

to be its owner within the meaning of the tax laws subjecting him to a tax levied upon the fee.

He has no title yet he is assessed upon the fee and is obliged to pay a tax which amounts at the present time each year to more than three times the annual rent he agreed to pay to the State of New Jersey, and a tax which is one-fifth the price fixed by the Riparian Commissioners as the value of the fee upon the payment of which the State would convey the fee.

(A) *Cases relied on by the courts below from New Jersey.*

Both the courts below cited in favor of their position *Cook* v. *Bayonne*, decided by the Supreme Court of New Jersey, two judges, Justices Parker and Bergen, November 1910, 80 N. J. L. 596, where the headnote is:

> "An instrument calling itself a 'lease' made by the riparian commissioners of this state for lands under water pursuant to the statutes of 1869, 1871, General Statutes, pages 2788, 2790, which 'bargains, sells, leases and conveys to the grantee, her heirs, and assigns forever, with habendum in fee and reservation of annual rental with right of re-entry and of distress in case of non payment expressly reversed and convenanting for a further conveyance, free and discharged of the rent on payment of a stipulated gross sum, is a grant in fee subject to a rent charge, and the land therein described is taxable in the hands of the grantee.'"

I have had the opportunity of examining the brief of counsel for the prosecutor in certiorari in that case and I find that the case was not in any wise fully argued. The Court in its opinion does not

discuss the constitutional questions raised here nor does it consider the question of what would happen in case the lessee failed to pay the rent and the State went into possession. Would the tax be extinguished? The State could not pay the tax for it would be in violation of the constitutional provision forbidding the legislature to deplete the school fund. It would not pay the tax because there is no provision of law which it could. The State has never paid a tax. Its rights cannot be affected by taxation. It does not take up the question of the improvements which if the lessee looses his rights belong to the State. It does not take up the question as to how the tax can be enforced, the tax laws of New Jersey providing only for a sale of a fee absolute. Does a sale under the tax title take away the rights of the State of New Jersey? It does not mention the case of *Pohlemus* v. *Bateman, supra.*

It rests upon the case of the *Hudson Tunnel Company* v. *Attorney General,* 12 C. E. Gr., 573, 578 decided in 1876. That case came to the Court of Errors and Appeals upon an appeal from an award by the Court below of a temporary injunction restraining the Hudson Tunnel Company which had been given power of eminent domain from condemning a tunnel space under lands under water held by lease from the State of New Jersey. The opinion of the Chancellor, Runyon, awarding the injunction, found on page 176 of the same report was reversed, two judges dissenting, upon the ground as I read the opinion, that the work intended to be done by the Tunnel Company would not affect the right of the State to any greater extent than work which could have been done by the lessee from the state. In other words, the lessee

from the State might under the terms of its lease reclaim the land and build a tunnel thereon or build a tunnel thereunder and inasmuch as the lessee might do it, the Tunnel Company was not contemplating doing anything more than the State would permit its lessee to do. Hence that the lands could not be considered as exempted from the right of eminent domain conferred upon the Tunnel Company.

It is interesting to note that two judges dissented even upon this proposition and that the opinion of the Chancellor was quite to the contrary.

(B) *Cases in point from New Jersey.*

Subsequent to the determination of this case, however, the case of *Pohlemus* v. *Bateman* was decided by the Court of Errors and Appeals and in that case it was expressly held, that until reclamation even the grantee had no title to the lands under water.

Pohlemus v. *Bateman* is not mentioned in *Cook* v. *Bayonne.*

In *Woodcliff & Co.* v. *N. J. etc. Railroad Company,* 43 Vr. 137, an attempt was made by the New Jersey Railroad Company to condemn lands of the Woodcliff Company held by lease from the State and the Court. Justices Fort and Pitney (now Justice of the Supreme Court) said:

> "The prosecutor is the assignee of a lease for the land in front of its lands, lying under water and within the exterior line of solid filling which lease was orginally made by the State to one John Meeks on December 21st, 1869. *The State is therefore the owner of said lands under water subject to said lease and the prosecutor's rights thereunder which*

> *can only be determined by a reference to the terms of the lease itself,* which is not printed in the record. If by the terms of a lease or grant made by the State the interest conveyed to the grantee is less than the fee, then such interest as is taken is taken as absolutely as the lease or grant imports and the statutes under which it was made authorize.
>
> "This condition existing under such a lease or grant by the state, we think that such interests as the lessee or grantee possesses are the subject of condemnation under the state's power of eminent domain, when exercised either by the state or by a corporation having the power to condemn lands for public purposes."

And further, page 139:

> "I am unable to distinguish as between the right to condemn this class of private lands and any other land by grant or lease."

And in *Stevenson* v. *Paterson & Newark R. R. Co.,* Court of Errors and Appeals, 5 Vr., 532, the title of the state to lands under water is discussed in extenso and it was held that the state was the owner of the lands under water with all the rights of a private ownership and that it might grant it or lease it. Page 542.

And that the State might lease its land as distinguished from a grant has been recognized by this Court in the *Mayor of Hoboken* v. *Pennsylvania Railroad,* 124 U. S., 656, 31 L. Ed., 543, in which it was held that the State is the owner of the lands under water and that such ownership has all the incidents of private ownership and the lands may be leased or granted, and the estates are held by the lessees or grantees upon the same terms as other lands are held by grants from private persons, page 552.

(C) *Question Open in Federal Courts.*

The case of *Cook* v. *Bayonne* did not and will not go to the Court of Errors and Appeals and the law of the State of New Jersey being in this shape there is no authoritative decision of the highest courts of that state bearing upon the questions raised in this case, and the matter was open for determination of the federal courts as a novel question.

Friedman v. *Snare & Triest Co.*, 169 Fed. 1.

Petition for certiorari to United States Supreme Court denied, 214 U. S. 518.

Nor is this court in anywise bound by the adjudication of the State Courts as to the effect of written instruments where the question of rights under the Federal Constitution arise as in this case.

It is insisted that the plain language of the statutes and of the lease requires the court to hold that the estate held by the appellant is a leasehold estate. The statutes call it a lease; it is called a lease in the instrument of transfer. The State has in its deed asserted that it is the owner and that this instrument was a lease. It is estopped from denying it.

(D) *State and Its Municipalities Estopped from Claiming Instrument Other than a Lease.*

Generally speaking, the doctrine of estoppel by deed applies against the state and it will not be allowed to assert anything in derogation of its grant.

19 Am. Digest, Cent. Ed. Title "Estoppel," sec. 62, col. 1979.

Vermont v. *Soc. for Propagation of the Gospel*, Fed. Case, No. 16920.
Fletcher v. *Peck*, 10 U. S. 87, 3 L. Ed. 168.
Commonwealth v. *Andres Heirs*, 20 Mass., 224.
Atty. Gen. v. *Boston Wharf Co.*, 78 Mass. 552, 16 Cyc, 714 and cases cited.
11 Am. & Eng. Encyc, of Laws 396 and cases cited.

Recitals in a deed by the Government are binding on it.

Magee v. *Hallett*, 22 Ala. 699.
St. Paul, etc., 1st Div. v. *St. Paul R. R. Co.*, 20 Minn. 31, 49 N. W. 303.

The grantee cannot deny the manner of the grantors holding as asserted in the deed.

McCloskey v. *Doherty*, 97 Ky. 300, 30 S. W. 649, 17 Ky. L. Rep. 178.
Stimpson v. *Thomaston Bank*, 28 Me. 259.

And conversely, the grantor cannot deny the manner of holding he intended to convey to the grantee where in his deed he has expressly called it a name having a particular significance.

(E) *In New Jersey by Statute all Names Must be Assessed upon and to the Owner of the Fee and if the Lessee Pays the Tax He May Recover of the Lessor.*

Under the tax laws of the State of New Jersey all property must be assessed to the owner of the property and the tax is based upon and assessed against the fee.

Tax Law of 1854, Gen. Stat., p. 3350, (C section 1):

> "That it shall be the duty of the assessors of the several townships in this state in making their assessments as now provided by law to assess all lands, tenements, hereditaments and real estate, in the names of the owners thereof, respectively and to designate the same by some short description as will be sufficient to ascertain the location and extent thereof."

Tax Act of 1891, that lands occupied by a person other than the owner may be assessed to the owner, etc.

Act for the Assessment and collection of taxes 1891, section 5:

> "All property taxable under this act shall be valued by the assessors of the respective taxing districts; property omitted by the assessors may be assessed as hereinafter provided; all property shall be assessed *to the owners thereof* with reference to the amount owned, etc.
>
> "Tax Act of 1846, General Statutes, approved April 14th, 1846 (Case No. 1, page 130) that the tenants or other persons in possession or having the care of any lands or tenements and their goods and chattels shall be and they are made liable for the payment of taxes which are or shall be imposed upon the said lands; and if any tenant or other person shall pay, or his or her goods and chattels shall be levied on and sold to pay any such taxes it shall be lawful for him to *deduct the sums paid out of the rent or* to recover the same from the landlord or owner by action of debt, with costs; provided, always, that nothing in this act shall effect or extend to any contract made or to be made between landlord and tenant."

Tax act of 1903, laws of 1903, page 46 (Case, No. 1, page 130):

> "The goods and chattels of the tenants or other persons in possession or having the care of any real property shall be liable for the payment of the taxes on the land, and on payment may recover the same from the landlord or tenant by action on contract or by deducting the sum so paid out of the rent then or hereafter due unless otherwise provided by his contract with the landlord."

Section 5 of the Tax Act of 1903 further provides:

> "All property taxable under this act shall be valued by the assessors to the respective taxing districts; property omitted by the assessors may be assessed as hereinafter provided; all property shall be assessed *to the owners* thereof with reference to the amount owned on the 20th day of May in each year."

And the Supreme Court in *Tindell* v. *Vanderbilt,* 4 Vr., 38, said that real estate must be assessed to the owners and an assessment not made to the owners is bad.

Not only therefore do the tax laws of the State of New Jersey require real estate to be assessed to the owners but also provide that if the tenant pays the tax, he may recover from the owner.

There is no legislation specifically subjecting these lands to taxation and if they are taxable authority to tax must be found in the foregoing statutes.

It is admitted in the stipulated facts that there is no legislation specifically subjecting these lands to taxation (Stipulation, p. 46, par. 9) and that there is no legislation permitting a suit against the State of New Jersey.

(F) *Lands under water are the property of the State and therefore not taxable.*

Lands under water are the property of the State and are not taxable.

> *State* v. *Jersey City,* 1 Dut., 530.
> *Colket* v. *Rightmire,* 17 Vr., 341.

Where the court said: "Lands under tide water not being liable to assessment by the City, all proceedings taken to make sale of the land in question for taxes are invalid."

> *Winants* v. *Jersey City,* 13 Vr., 349.
> *N. Y., Lake Erie & Western R. R. Co.* v. *Yard,* 14 Vr., 632.

If these lands under water are therefore the lands of the State they are not taxable.

If the instruments under discussion are leases they are not taxable, for under the tax laws, taxes are assessed against the fees and to the owners and it is universally held that the lessor is the owner within the meaning of such tax acts.

It must never be lost sight of that it is stipulated that the original and adjusted taxes are based upon the value of the fees and not upon the value of the leasehold interests.

(G) *Cases holding that under tax laws, as in New Jersey, the lessor is the owner and not the lessee.*

A most important case is that of the *State, ex. rel, Glen* v. *Mississippi River Bridge Company,* Supreme Court, Mo., 35 S. W., 592, on reargument (19 S. W., 421) there was a lease of a bridge to a railroad company *in perpetuity.* And the Court said:

> "It is clear from this statement of the substance of the lease that notwithstanding the long term of the tenancy may normally

> endure, *the paramount title remains in the Bridge Company.* The lease is subject to a defeasance in event of any failure on the part of the lessee to meet all its requirements and its entire scope and effect excludes the notion of any attempt of a transfer of the title outright. *This view results in the ruling that the property is still 'owned' by the Bridge Company within the meaning of the statutes."*

This case is authority for the proposition that as between the lessor and the lessee in perpetuity the lessor is liable for the taxes and is the owner within the meaning of tax statutes.

In the case at bar the lease does not attempt to convey a legal title. It may normally endure forever. But it is liable to be defeated if the lessee violates any of the provisions and there are many provisions besides payment of rent. The complainant has not paid any part of the purchase price. Under the decision of the Court of Errors and Appeals in *Pohlemus v. Bateman, supra,* the complainant cannot even bring trespass until the lands have been reclaimed, and under this case it is specifically held that he has no title.

In *East Tennessee V. G. Ry. Co.* v. *Morristown,* Chancery Appeals, Tennessee, 35 S. W., 771, in construing an act similar to the New Jersey tax act the court held "the *lessor is the owner thereof* within the laws of 1899, Ch. 96, p. 145, declaring that all property should be assessed *in the name of the owner."*

In this case there was a lease for ninety-nine years and the Court, citing

> *Tulley E. & F. Inst.* v. *Memphis,* 8 Heisk, 845; 12 Am. & Eng. Encyc. of law, 692; *Weichselbaum* v. *Curlett,* 20 Kans., 709;

B. Retterson v. *Budd*, 17 Ark., 546;
Taylor, Landlord & Tenant Section, 341.

said that as between the lessor and the lessee when the lease contains no provision for the payment of the taxes, the lessor must bear the burden of the taxes on the leased estate, and *that if the assessment is based on a wrong holding it is void and the sale to enforce it is void.* This case was affirmed by the Supreme Court of Tennessee.

But there are several cases directly in point where the question has been whether lands leased from the State are taxable in the hands of the lessee.

In *Dougherty* v. *Thompson*, 71 Texas, 192, there was a lease of school lands belonging to the County. A tax was assessed against the fee to the lessee as if he were the owner exactly as in the cases at bar. An injunction was asked to restrain the collection of the tax. The Court sustained the injunction and said: "*In the absence of statute the lessee will not be liable to pay taxes on a leasehold,*" page 199.

In *Taylor* v. *Robinson*, 77 Texas, 364, 10 S. W., 245, lands were set apart by the State for a contractor as payment for construction of the new capitol, to be conveyed to him from time to time in the progress of the work. It was held that a lease executed after the original contract under which the contractor took possession of all the lands so set apart at a stipulated rent until the title should vest in him at the completion of the building, did not give him such a holding as to make the lands taxable.

The case is parallel with that at bar. In the case at bar, the State leased land under water to a tenant. Under the lease the tenant may take

possession and hold possession until he pays the purchase price and obtains the fee. As a matter of fact under the decision of the Court of Errors and Appeals in *Pohlemus* v. *Bateman* it would seem as if the lessee had only a right to reclaim. This he has not done. In the case above cited the state leased to the contractor at an annual rent state lands and the contractor took possession and continued to enjoy it (which the lessee in the case at bar did not do for he has not reclaimed) until he paid the purchase price by the completion of the building which he was building for the State. *It was held that during the time that he held and enjoyed the lands under the lease, the lands were not taxable because they were state lands.*

In *Buckingham* v. *Reeves,* 19 Ohio Reports (1850), 399, an attempt was made to create a judgment lien upon a leasehold estate held from the State. Held that this could not be done.

An to the same effect is the Lessees of *Buckley* v. *Osborn* (1837), 8 Ohio 188.

Whether the lands are taxable or not depends upon where the ultimate title is.

In *People ex rel. the Mayor* v. *Board of Assessors,* 111 N. Y. 510, an attempt was made to tax a ferry landing in the City of Brooklyn and owned by the City of New York, the Court said:

> *"The fact that the City of New York operates the ferry through lessees and derives its revenue from the rental and not from the operation of the ferry by its immediate agents and servants does not make the franchise of the landing taxable. It is to be assumed that the immunity of the property from taxation was in the contemplation of the parties when the lease was made and was considered by them in fixing its terms."*

And in *People ex rel. International Navigation Co.* v. *Barker,* 153 N. Y. 101, an attempt was made to tax a shed erected by the lessee upon a pier leased from the City of New York, under a lease requiring its erection and providing that it should become the property of the City on the expiration of the lease. Held not taxable as the property of the lessee. Judge Grey said:

> *"The general rule where the lease is silent upon the subject imposes upon the lessor the obligation to pay the tax upon leased property, and in this case it would be a seeming incongruity if the City, which is the taxing power, should assess its tenant for taxation."*

In the case at bar the improvements become the property of the State, all taxes are State taxes and the State is taxing itself.

Where the fee resides determines the question as to whether the property is taxable or not. If the municipal authorities lease lands from private persons that property is taxable.

> "Lands leased by county commissioners from an individual on which the county maintains an industrial home for poor children is private property and not within the provision of the Constitution that the Legislature may exempt public property used for public purposes from taxation."

In re Commissioners of Blair County, 8 Pa. Dis. Rep. 41.

Unless the fee absolute is in private ownership the property is not taxable.

In *McGregor* v. *M. & R. R. R. Co.,* 39 Iowa, 655, in which case a bill was brought to enjoin the State Treasurer from assessing lands, claimed

to be not subject to taxation, it appeared that the lands were to be received from the Government upon the performance of services and had been earned although no formal patent had been granted. It was held that even if the lands were earned so long as the government retained the legal title, they were not taxable.

In *Hussam* v. *Durham*, 17 Sup. Ct., 253, 165 U. S. 144, 41 L. Ed. 664, it appeared that a certificate of location was issued in 1858, but nothing was in fact paid to the government for the land until 1888. During this period the land was sold for taxes assessed against it in the name of locator. Held, that the title remained in the government until 1888 and therefore the land was not, prior to that time, subject to State taxation, and the tax deeds were void.

And particularly in the case of the *United States* v. *The City of Milwaukee*, 100 Fed. Rep. 838, where it appeared that the United States sold a post office site and retained the use of the property and paid rent therefor. The State assessed for taxation. United States Federal Court in equity enjoined the City Treasurer from selling for taxes. Cases are considered including,

Railway Co. v. *Prescott*, 16 Wall, 603, 21 L. Ed. 373;
Railway Co. v. *McShane*, 22 Wall, 446, 22 L. Ed. 747;
Colorado County v. *County Commissioners*, 95 U. S. 259, 24 L. Ed. 495;
Nor. Pacific Railway Co. v. *Traill County*, 115 U. S. 600, 29 L. Ed. 477.

One-half of the purchase price had been paid, and the Court said:

"It may be that the purchaser may not

> complete his payments, in which case the title will remain in the United States of America, and so long as the government has a monetary interest in the property, retaining the legal title, the property is the property of the United States so far as the question of taxation is concerned."

So in the case at bar. This lease provides that upon the payment of a certain stipulated sum conveyance of the fee will be made. The State has not been paid any part of this sum. It has the legal title and a monetary interest in the land.

In *Corcoran* v. *City of Boston,* 79 N. E., 929, 193 Mass., 586, it was held that lands occupied by a person under bond for a deed from the commonwealth were not taxable.

(H) *Where leaseholds are taxable it is by virtue of special statute and then only leasehold right is assessable.*

Many states have adopted statutes specifically subjecting lands of the State leased to private individuals to taxation, but under each of these statutes, it is held that it *is the interest of the lessee alone that can be assessed.* In the cases at bar the fee has been assessed.

In every case in which a leasehold interest from the State has been taxed it has been by virtue of a special statute.

The decisions in Illinois are upon a special statute and under each one of these decisions it has been held that the interest of the lessee only is taxable and if the value of the fee is assessed the tax is bad.

> Act of 1853, page 39, sec. 5;
> *Laselle* v. *Ottawa,* 16 Ill., 419;

Carrington v. *People,* 195 Ill., 484, 63 N. E. 163.

So in Iowa.

Chicago M. & St. R. Ry. Co. v. *Hemmingway,* 91 N. W. 910, 117 Iowa, 598.

So in Nebraska.

State v. *Tucker,* 38 Neb., 56, 56 N. W. 718.

So in Texas.

Trammel v. *Faight,* 74 Texas, 557, 35 S. W. 217.

In this later case it appeared that the lands were leased from the state for six and ten years. The taxes were assessed upon the *freehold.* The statute provided that leaseholds for three years or more should be taxed. There was a provision in the leases by which they might be terminated by the State selling the land. The Court said:

> "Unless the land is clearly within the statute, it is not taxable." And further:
> *"If the appellant had held the lands under an absolute lease for a term of three years or more, his leasehold estate would have been subject to taxation upon such value as it would bring at a fair voluntary sale for cash. But he would not have been liable upon the value of the freehold estate."*

And so in the case at bar if the complainant were taxable at all he would be taxable upon a valuation based upon what his leases would bring at a sale and of course in such a valuation the fact that he had to pay large sums to the state would have to be taken into consideration. In no instance could he be assessed upon the value of the fee absolute.

In Massachusetts there is a special statute.

Corcoran v. *City of Boston,* 79 N. E., 829, 193 Mass., 586,

in which case it is held that the payment of the tax is enforceable *only by a sale of the leasehold interest* and the buildings on the premises.

In Washington there is a special statute.

In *Gray's Harbor Co.* v. *Chahalis County,* 63 Pac., 233, 23 Wash., 369, where it is held that a wharf and a warehouse, on tide lands held by the plaintiff under contract or purchase from the State, are taxable as part of the land under Revenue Law 1897, p. 136, Sec. 2, providing for assessment of the improvements together with the land and not separately; Laws 1893, p. 323, Section 3, declaring personal liberty for the purposes of taxation shall embrace and include all improvements on lands the fee of which is still vested in the State; and Section 26, p. 335, providing that property held under a contract for the purchase thereof, belonging to the State, shall be considered, for all purposes of taxation, as the property of the person so holding it.

In *Ex Parte Gaines,* 56 Ark., 226, there was consent of the government for the taxes imposed.

Board of Water Commissioners v. *Auditor General,* 73 N. W., 801.

It was held under the charter of the City of Detroit empowering the Board of Water Commissioners to hold property necessary to carry out the intent of the act, and exempting such property from taxes, that property formerly used as a pumping station but afterwards and for some years leased to a Dock Company is exempt from taxation.

(I) *General words in statutes will not be sufficient to subject the property to taxation.*

Trustees of Public Schools v. *Trenton,* 3 Stew. (N. J.), 681, Court of Errors and Appeals, the Court said that the inference of the law is that the general language of statutes prescribing the property which shall be taxable *is not applicable to the property or its municipalities.* Such property is therefore by implication excluded from the operation of the law imposing taxation unless there is a clear expression of intent to include it.

Cooley on Taxation, Sec. 131.

In *City of Augusta* v. *Dunbar,* 50 Ga., 387 (1873), held that the municipality could not tax bonds issued by the State.

> "It is not to be presumed that the State intended without an express grant to that effect, to confer upon a municipal corporation, the power thus to depreciate State securities, and to do what the State itself ought not to be presumed to have done in the absence of clear language so declaring."

Lessees of Buckley v. *Osburn* (1837), 8 Ohio, 188. The Court said:

> "The land in controversy was not the property of an individual, but was the property of the State of Ohio and it cannot be supposed it was the intention of the State to levy a tax on its own land."

In *Directors* v. *The School* (1862), 42 Pa. St., 25:

> "The public is never subject to tax laws and no portion of it can be without express statute. No exemption law is needed for any public property held as such."

In *Penwick* v. *Foster,* 58 S. E., 773: The general rule is that public property is not subject to taxation, and the Constitution and statutes, so far as they deal with the subject of taxation, are to be interpreted in the light of the fundamental principles that public property and the various instrumentalities of government are not subject to taxation.

> "General terms and expressions in the Constitution or the statutes providing for the collection of taxes are never allowed their full literal import if the effect of such construction is to require that to be done which the law does not authorize, or to violate a fundamental principle on which the government is founded and operated."
>
> *Hussman* v. *Durham,* 165 U. S., 144, 41 L. Ed., 664.

In New Jersey the property of the State of New Jersey is specifically exempted from taxation by all of the tax laws.

It is insisted therefore that the instruments at bar convey such title to the lessees as is not taxable to them as owners upon the value of the fee, and it is insisted that it is apparent that it was the intention of the Legislature not to subject these lands to taxation.

(J) *The Effect of Permitting These Lands to be Taxed is Such as to Clearly Indicate that the Legislature Never Intended to Permit Their Taxation.*

The annual rent is $4,233.60, while the tax assessed against it for the year 1906 was $12,250, three times the annual rent, and yet the act of the Legislature provides that the Riparian Commis-

sioners should fix the value of the fee and a proper annual rental. The lands have not increased in value. They have rather decreased. There is a presumption that the officers of the State did their duty, and fixed the reasonable annual rent and the reasonable sum to be paid to get the fee, yet we find that the tax assessed by the City is three times the annual rent and one-fifth the sum to be paid to get the fee. *If the ordinary rule between landlord and tenant were applied the rent would be wiped out and the State would owe the lessee upon the lease approximately* $8,000.

If the lands revert to the State, as they may if the annual rent is not paid, the State will not take the lands charged with the taxes. It has not authorized its municipalities to tax itself. It cannot because the rents are assets of the school fund and cannot be depleted by taxation, as will more fully hereafter be set forth. If the tenant therefore does not pay the rent and the lands revert to the State there are taken out of the City's tax arrears (which are the basis for the issuing of bonds) large sums of money. Is it reasonable to suppose that the legislature intended that the City might put these lands in its ratables at their full fee value, assess taxes thereon, and collect if the leases were retained by the lessee, and if not, and the State was compelled to re-enter, have this amount of taxes stricken out?

The municipality would never know at what moment a large portion of its taxes might be cut off.

Furthermore, there is no procedure by which the taxes can be collected. The Martin Act, Chapter 112 of the Laws of 1886, set out in full in the sup-

plemental bill of complaint, provides for the sale of nothing less than *freeholds*. The City has advertised *the freehold* of these lands for sale. This it cannot do because of the interest of the State. The fact that there is no adequate remedy for the enforcement of the taxes upon these leasehold estates indicates that it was never intended to tax them.

It is therefore insisted that under the law of the State of New Jersey the interest of the complainant in the leaseholds is not taxable.

II.

To permit taxation would deprive the appellant of his rights secured to him under the Constitution of the United States, fourteenth amendment, in that it would deprive him of his property without due process of law.

If the lands are not properly taxable there is no question but that the appellant is deprived of his property without due process of law. This both courts below conceded.

III.

To permit the collection of the taxes imposed would be to deprive the appellant of the equal protection of the law guaranteed to him under the fourteenth amendment to the Constitution of the United States.

Under the tax laws of the State of New Jersey all property is assessed to the owner. There is

no provision in the lease under which the lessee agrees to pay the taxes. Be his interest as lessee taxable or not, he certainly has not assumed the obligation to pay the taxes upon the fee. The lease is an ordinary lease and in the absence of an agreement to the contrary it is to be presumed that the owner of the fee pays the taxes.

Under the tax laws of the State of New Jersey if the tenant pays the taxes he may recover against his landlord. Not so with the tenant of the State. In the first place no suit is permitted against the State of New Jersey (Stipulation, p. 46, paragraph 9), and in the second place the legislature could not authorize the payment of a tax out of the annual rental for it would be a depletion of the school fund.

Hence to permit the collection of these taxes would be to deny to the complainant the rights secured by the tax laws of New Jersey to every other tenant and would deny him the equal protection of the law, under the Feleral Constitution.

IV.

To permit the collection of the tax would be to give effect to a law impairing the obligation of contracts, to wit: the contracts of lease and assignment.

The relation between the complainant and the State is indicated by the contract of lease based upon the statutes.

There is nothing in this contract that indicates that the legislature intended that the lessee should pay the taxes upon the fee. Throughout the statute and in the instrument itself the paper is called a

lease. I have pointed out that the doctrine of estoppel by deed lies against the State.

Fletcher v. *Peck,* 10 U. S. 86, 3 L. Ed. 163;
11 Am. & Eng. Encyc. of Law 396. and cases cited;
16 Cyc. 714, and cases cited.

Neither the grantee nor the grantor can deny the manner of his holding as asserted in the deed.

McCloskey v. *Doherty,* 97 Ky. 300, 30 S. W. 649, 17 Ky. L. Rep. 178;
Stimpson v. *Thomaston Bank,* 28 Me., 259.

I shall not repeat what I have previously said with respect to the effect of the statutes and the lease. It would seem that the State has so often called this instrument a lease and so often declared that the relation of landlord and tenant obtained that it cannot now be heard to deny it.

The general rule is that in the absence of language to the contrary the lessor shall pay the taxes.

East Tennessee V. G. Ry. Co. v. *Morristown,* Chancery Appeals, Tennessee, 35 S. W. 771, and cases cited.

And in *People* v. *Barker,* 153 N. Y. 100, it is said:

> "The general rule, where the lease is silent upon the subject, imposes upon the lessor the obligation to pay the taxes upon the leased property, and in this case it would be a seeming *incongruity if the City, which is the taxing power, should assess its tenant for taxation.*"

And particularly

People v. *Board of Assessors*, 111 N. Y., at page 510, where the Court said:

> "It is to be assumed that the immunity of the property from taxation was in the contemplation of the parties when the lease was made, and was considered by them in fixing its terms."

In the case at bar it must be assumed that the immunity from taxation was in the minds of the parties when the annual rentals were fixed. They were State lands. They were not taxable as State lands. The legislature by the Statutes, Tax Act of 1846, April 14th, 1846, had determined that the leessor and not the lessee was liable for the taxes. This was repeated in every subsequent tax act. There was no reason for the lessee to suppose that this land would be subjected to taxation when he took a lease of it, and it must be presumed that the terms of the rentals were fixed upon this assumption. The law is that unless there is a special legislative authority lands of the State are not taxable and there was and is no special legislative authority.

There was no reason for the lessee to imagine that either these lands or his interest therein would be subjected to taxation.

Nor was there any reason for the present complainant so to assume when he took the assignment of the lease.

Not only does the state now demand the annual rentals but it demands from its lessee three or four times the annual rentals each year in taxes. It demands a tax not only upon the leasehold interest of the complainant but upon the value of the fee.

The taxes are state taxes.

Black on Taxation, page 5 and cases cited.

The City of Jersey City is merely the agent for the collection of the State tax. To permit the State of New Jersey to collect the tax from its lessee under the terms of the instruments in the case at bar would be to give effect to a law impairing the obligation of a contract within the meaning of paragraph 1 of section 10 of article 1 of the Constitution of the United States.

That it is the recognized law of New Jersey that unless there is something in the lease itself that subjects the property to taxation, the lessee cannot be taxed is demonstrated by the case cited by the defendant below of the *State, Morris Canal & Banking Company* v. *Haight,* Collector, 7 Vr., p. 471.

In that case the Morris Canal & Banking Company had a lease from the State of New Jersey and it was held that the land was taxable because under the lease, see page 476 of the report, these words occurred, "that the exemption of said company in its original charter from taxation assessments or other legal impositions shall not extend to the property or privileges hereby granted." The Court held that because of these words in the very instrument of lease the intent of the legislature was perfectly manifested and it was to render such premises taxable as other property was.

This case far from being a case in favor of the defendants is in favor of the view taken herein *for it is an admission that there must be some express provision in the lease itself which subjects the lands to taxation before any different rule is applied to leases from the state than to leases from an individual.*

V.

To permit the adjusted lien to be collected would be to permit the taking of property without due compensation within the meaning of paragraph 16 of Article I of the Constitution of the State of New Jersey and would be a taking of private property without due process of law within the 14th amendment to the Constitution of the United States, inasmuch as the lands receive no municipal benefit.

The lands in question receive no municipal benefits from Jersey City. They are separate and apart from the rest of the city. They have no connection with it. They require and receive no fire protection, no police protection, no health department protection; they receive no benefits from the Board of Education; they require and receive no labor of any kind upon the part of the City's employees, officers or servants. They are entirely under water. They have no connection with the main land; are separated from the City by two lines of railway and one canal, and cannot be reached from the City without trespassing on the lands of railroads and of private owners. They are absolutely isolated; they are in a worse condition than unproductive farm lands.

(A) *Prior to the compact of 1833 the lands were not a part of New Jersey.*

Prior to the compact of 1833 they obtained no benefits either from the City of Jersey City or from the State of New Jersey, and were not within the boundary limits of the State of New Jersey.

State v. *Babcock*, 1 Vr. 32;
Corfield v. *Caryell*, 4 Wash. C. C. 384. F. C. 32, 30.
Handly's Lessee v. *Anthony*, 5 Wheat. 374 5 L. Ed. 113.
Rose's Annotations to such case.
Henderson's Bridge Co. v. *Henderson City*, 173 U. S. 612, 43 L. Ed. 823.
Pea Patch Island, 3 Fed. Cases, 1147-8.

But the compact between New York and New Jersey provides that the boundary line between the two states so far only as property rights are concerned is the middle of the river and bay.

By the compact all governmental benefits are received from New York.

By this compact all of the benefits which municipal taxation usually obtains are secured for the lands under water from the State of New York, such as police and quarantine protection. The jurisdiction of the State of New York is exclusive over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof.

In the Sarah E. Kennedy, 25 Fed., 569, this compact was considered and the addition by Congress of another section was mentioned. Page 571.

It is true that this Court has held in *Central Railroad Co. of N. J.* v. *Jersey City*, 209 U. S., 473 that the State of New Jersey has jurisdiction over the lands and may tax them. But whether this be so or not because of the fact that these lands derive no benefit from municipal taxation and are lands under water, separated from the main land and widely separated from the State of New Jersey and derive all the benefits of taxation from the State of

New York, it is unconstitutional to tax the lands for municipal taxation *in Jersey City.* The lands receive no benefit from that City. The lands are in a worse plight than agricultural lands within the limits of the City which are held not taxable for municipal purposes.

(B) *When one receives no benefits from a Municipal corporation he cannot be called upon to assume any of its burdens.*

Desty on Taxation, Vol. 1, p. 287;
Hilliard on Taxation, p. 144, Sec. 13;
Buell v. *Ball,* 20 Iowa, 282;
O' Hare v. *Dubuque,* 22 Iowa, 144;
Deeds v. *Sanborne,* 26 Iowa, 419.

The controlling fact in determining whether lands of a rural character brought within the limits of a city are subject to taxation for municipal purposes, is the purpose for which they are held. If occupied for a City residence and for the advantage of proximity to the City, they are subject to City taxation.

Cheany v. *Hooser,* 9 B. Mon., 330;
Sharp Executor v. *Dunavan,* 17 B. Mon. 223.

But otherwise, if used for agricultural purposes.

Derman v. *Ft. Madison,* 30 Iowa, 542.

But where they receive no benefit and the lands are used for agricultural purposes, the imposition of a City tax is invalid.

Desty, Vol. 1, p. 287; Vol. 2, p. 1101;
Covington v. *Southgate,* 15 B. Mon., 492;
Bradshaw v. *Omaha,* 1 Neb., 16;

Brooks v. *Poke County,* 52 Iowa, 460;
Fulton v. *Davenport,* 17 Iowa, 404.

Lands lying within the limits of a town or a City used for agricultural purposes, remote from the City proper, and without any streets or alleys near, are not liable to taxation for City purposes.

Hilliard, 147 Sec. 16;
Dillon on Municipal Corp. 973, Sec. 794.

In *Buell* v. *Ball,* 21 Iowa, 282, the Court said:

"The ground upon which the Court interferes is taking property for public purposes without just compensation."

Morford v. *Unger,* 8 Iowa, 82;
Langworthy v. *Dubuque,* 16 Iowa, 271;
Olmer v. *Omaha,* 3 Dill., 368;
Durant v. *Kaufman,* 34 Iowa, 174.

"A bridge, although within the limits of a city, is not subject to municipal taxation if it recieves no benefit from the city government which will justify it."

Louisville Bridge Co. v. *Louisville,* 81 Ky., 180;
Covington v. *Southgate,* 15 B. Mon., 492.

(C) *The lands in question receive no benefit from the municipality of Jersey City and cannot be taxed for its support.*

It is submitted that bearing in mind that prior to the compact of 1833 New Jersey had no rights in the lands under the waters of New York Bay; that these lands are under water; are separated from the City of Jersey City by several miles, cannot be reached except by trespassing upon prop-

erty; have no entrance from the City; obtain all their police protection from the State of New York; have no police, health, fire, educational or other needs to be subserved by the City of Jersey City, and always have been in this condition; that not only are they not used for city residences, but they are not even used for agricultural purposes, that they are too far under water for that purpose, and not far enough under water to permit profitable navigation. That under the law of the State of New Jersey as defined in *Polhemus* v. *Bateman* the owner has no title in them, no exclusive possession over them; cannot maintain trespass against anybody who sails over them; has only the one right, to wit, the right to reclaim, that to tax such owner upon the value of the fee for municipal purposes is a taxation for purposes from which he receives absolutely no benefit, and it is a taking of property without due process of law and a taking of private property for public use without compensation.

The injustice of taxing these lands for municipal taxation is a potent argument that it never was intended to include them within the geographical limits of the taxing district of Jersey City, which will be subsequently taken up.

VI.

Permitting the taxation of the lands in the hands of the lessee would be in violation of the constitutional provision of the State of New Jersey forbidding the depletion of the school fund.

Paragraph 6 of Section 7 of Article 4 of the Constitution of New Jersey, (Exhibit C-21, p. 110) provides:

> "The fund for the support of free schools and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury, under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public schools for the equal benefit of all the people of the State; and it shall not be competent for the legislature to borrow, appropriate or use the said fund or any part thereof, for any other purpose, under any pretense whatever. The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of 5 and 18 years."

It is admitted in the stipulation of facts (p. 46, paragraph 10a) that the income from leases of riparian lands, including that herein referred to, constitute a part of the school fund and have constituted a part of the school fund since 1869. In paragraph 11 of the supplemental bill (p. 59) it is charged that the moneys derived by the State of

New Jersey as rental from the lease and the moneys which the lessee must pay under the option to purchase became and are under the Constitution and law of the State of New Jersey a part of the fund for the support of free schools. That taxation of said lands and premises and taxation of the rights of the complainant will result in diminishing such fund and is within the prohibition of paragraph 6, section 7, of article 4 of the Constitution aforesaid.

The statement of this entire paragraph is admitted by the stipulation (p. 67).

In the *Trustees of Public School* v. *Trenton*, 3 Stew., 668, the Court of Errors and Appeals held that the legislature had *no power* to deplete the school fund by *permitting municipalities to levy taxes upon mortgages* held by the school fund or to subordinate mortgages held by the school fund to taxes levied by municipalities upon lands upon which the school fund held mortgages.

The constitution of the State of Texas is similar to that of New Jersey on this point.

And in *Dougherty* v. *Thompson*, 71 Texas, 192, the Court said:

> "County school lands where leased to raise an available school fund are as exclusively devoted to the use and benefit of the public as would they be if covered with school houses; and the constitution forbids the taxation of the means through which said lands may be made to raise a revenue without sales as fully as does it forbid the taxation of the land. *Forbidding the taxation of the land, it forbids the taxation of an estate less than the fee whether imposed upon the county or its lessee.*"

The State owning these lands, dedicated to the school fund, has the power to lease them free from

taxation. In the hands of the State they are free from taxation. It needs no argument to convince one that if the land is leased free from taxation, a larger rental may be obtained.

The Court of Appeals of the State of New York, in *People* v. *Board of Assessors,* 111 N. Y., 510, has said:

> *"It is to be assumed that the immunity of the property from taxation was in the contemplation of the parties when the lease was made, and was considered by them in fixing its terms."*

Free from taxes, owned by the State, if the State leases them subject to taxation, the Legislature has depleted the school fund, contrary to the constitutional inhibition. The tax assessed is many times the amount of annual rent. *If the tax is to be paid plus the rent is it not apparent that if no taxes were to be paid, the amount of the taxes, plus the present rent, could have been obtained for the annual rent.* The legislature has no power to divert these large sums from the support of the public schools. It did not. It leased the lands free from taxation and obtained large rentals for that reason. It must be considered that the Legislature did what it had a right to do. The Legislature could have leased the lands free from taxation.

VII.

The adjusted taxes are illegal, having been made upon the real estate as upon a fee and not upon the interest of the appellant therein.

It is stipulated that the original tax was based upon the value of the fee and not upon the interest of the complainant therein and that the adjustment was also based upon the value of the fee and not upon the interest of the complainant.

This is conceded (Stipulation, page 44, supplemental bill, p. 61, paragraph 17, admitted by stipulation, p. 67). It is insisted that conceding the power of the municipality to tax, the tax having been levied upon the value of the fee including all interests in the lands and premises, having no regard to the fact that there was at least an interest of the state to the extent of the amount which was to be paid to the state to obtain the grant and the fee, is clearly invalid. It is provided in the lease that lots 4B—7B will be transferred by the State upon the payment of the sum of $60,480, whereas the taxes upon this land are in the neighborhood of $12,000 a year, based upon a valuation of $656,000 or eleven times the value fixed by the State.

The value of the land as fixed by the state itself was $60,000. *It permits its municipality to base a tax upon the fee and value the fee at* $656,000, *eleven times its value.*

No attempt is made to assess the interest of the complainant. No attempt is made to deduct from the value of the fee retained the interest of the State.

Even where taxation of lands leased from the state is permitted by statute, it is only the interest

of the lessee that can be taxed and if the tax is based upon the value of the entire property it is void.

Laselle v. *Ottowa*, 16 Ill., 419;
Carrington v. *People*, 195 Ill., 484, 63 N. E. 163;
Trammell v. *Faight*, 74 Texas, 557; 35 S. W. 319;

(A) *To sell this property and divest the interest of the appellant to satisfy the tax based upon the value of the entire property would be to take his property for public purposes without compensation, and to take his property without due process of law.*

Before acquiring the fee of this property, that is, lot 1504, 4B—7B, the complainant must pay to the State approximately $60,000. He is assessed for this $60,000, as if he had paid it, whereas as a matter of fact he hasn't. Presumptively he is taxed elsewhere if he has it and if he is taxed upon it again in this case, he is doubly taxed.

The complainant has no money tied up in the land. That which is tied up is the money of the State of New Jersey and cannot be taxed. If I lease from the State of New Jersey lands worth $60,000 and agree to pay to the State $4,000 a year rental upon the condition that when I desire I may pay the $60,000 and get a grant, if I am a man of no means and all that I can do is to raise the $4,000 a year, I have not the $60,000. I have no means or way to raise it. And if I keep the lease alive by paying $4,000 a year, does it increase my wealth? The amount that must be paid to the State of New Jersey in order to get the fee must under any circumstances be deducted from the value of the land.

In *Murphy* v. *Inhabitants of Trenton,* 18 Vr. 79, it is held that the amount of mortgages held by the school fund of the State of New Jersey should be deducted from the taxable value of the land and in that case deduction from the taxable value of the land was ordered.

It is stipulated in the case that no deduction was made for this either in the assessment or in the adjustment, but that the value of the land was fixed as the entire value of the freehold.

VIII.

The adjusted taxes are illegal because the lands are not within the taxing district of the City of Jersey City.

It is stipulated that if the lands are within the taxing district of Jersey City they became such under the provision of an act, to wit, section 1 of an act to re-organize the local government of Jersey City, approved March 31st, 1871 (Exhibit C, 18, p. 108).

And an act approved February 4th, 1873, P. L. 1873, section 1—4 (Exhibit C. 19, p. 109); section 1 of an act incorporating the township of Greenville, approved March 18th, 1863 (Exhibit C. 20, p. 109; Stipulation, p. 46, paragraph 10).

The lands if within the taxing district of Jersey City are within that portion of it known as the Township of Greenville, description of the bounds of which township is contained in Exhibit 20, p. 109, and is as follows: Bounded on the southeast by New York harbor; on the west by the Morris Canal and lands of James Curry, Esq., on the northeast by a road or lane known as Myrtle Avenue with a continued line running southeasterly from

said avenue to New York harbor and northwest from said avenue to Hackensack River.

No lands under water are expressly mentioned in this description and the boundary is by New York harbor and the lands run to New York harbor. It is further stipulated that these lands were a part of the Township of Bergen (Stipulation, p. 46, paragraph 10) "nor were any lands under water ever included in any of the charters granted to the Township of Bergen unless it be by some act herein referred to." An examination of each act referred to shows that no lands under water were ever included within the Township of Bergen.

The Township of Greenville was set off from the Township of Bergen by the description hereinbefore specifically set forth. The Township of Greenville became a part of the City of Jersey City by an act of consolidation, February 4th, 1873, P. L. 203, section 1-4, in which act no specific description was used (Exhibit C. 20, p. 109).

The general rule is that in the case of municipal corporations bounded on tidal water that the usual presumption must obtain that the soil between that and low water mark belongs to the crown and that therefore the municipality cannot enforce its jurisdiction over that place.

> *Bridgewater* v. *Battle cum Linacre Township*, 36 L. J. Q. B. N. S. 4, L. R. 2, 4, 15 L. T. N. S. 351, 15 Week Rep. 169.

In Dillon on Municipal Corporations, Vol. 1, Section 182, 5 Ed. Vol. 1, Section 352, the general rule is stated:

> "Since the leading object of an American municipal corporation is to invest the inhabitants of a definite locality or place with

> a corporate existence generally for the purposes of local government, it is obvious that the geographical limits or boundaries of a corporation ought to be definite and certain."

In *Fort Smith, Van Buren Bridge Co.* v. *Hawkins*, Ark., Supreme Court, 12 L. R. A., p. 487, a suit was brought to enjoin the collection of taxes upon the bridge of the Fort Smith & Van Buren Bridge Company. The Court said:

> "Municipal corporations can levy no taxes, general or special, unless the power to do so is plainly and unmistakedly conferred."
> *Dillon Municipal Corp.*, 4 Ed., sec. 763, 764, 786, 1 Dillon Municipal Corp., sec. 89-90.
> "The statutes of this State limit the right of a municipal corporation to levy taxes on real and personal property within the limits of such corporation."

It appeared in this case that the limits of the County of Crawford in which the Town of Van Buren was situated extended to the middle of a navigable river and it was held considering cases notwithstanding this fact that the town bounded on a river extends only to high water mark, although the county boundary goes to the middle of the channel.

The District Court below said in its opinion (page 105):

> "Admittedly the County of Hudson of which Jersey City is a territorial subdivision extends to the line between New Jersey and New York embracing the *locus in quo.*"

This may be so and yet not affect the question at issue for at the time of the incorporation of the township of Bergen out of which Greenville was carried that territory which was comprised within

the township of Bergen *was in the County of Bergen and before the compact of* 1833, *as will hereafter be pointed out, the State of New Jersey had no property right in the lands under the waters of New York Bay.*

The County of Hudson was carved out of the County of Bergen after the incorporation of the Township of Bergen and after the Compact of 1833, and the Legislature may have included within the boundaries of the County of Hudson its lands under water under the Bay of New York.

But under the act incorporating the township of Greenville which is the only act under the provisions of which these lands can be said to be a part of Jersey City (and it is so stipulated) nothing was included within the boundary of the Township of Greenville except what had previously been included within the limits of the Township of Bergen and unless lands under water are included within the Township of Bergen as distinct from the County of Hudson, no lands under water were included within the limits of the Township of Greenville.

Furthermore, in the case above cited, of *Fort Smith, Van Buren Bridge Co.* v. *Hawkins*, it was held that notwithstanding that the limits of the County extended to the middle of the navigable river, the limits of a town bounded on that river extended only to high water mark.

That the law of the State of New Jersey is that the limitations of municipal corporations are limited by the express words of their charter is indicated in *State* v. *Davis*, 25 N. J. L., 386.

It was held by the Supreme Court that the County of Camden, which was set off from the County of Gloucester, the boundary of the county

being "by the river" did not extend to the middle of the river although the State owned to the middle of the river and hence that the land between the high water mark of the river and the middle of the river was within no county of the State. It was further held that notwithstanding that the county line did not go to the middle of the river that the township line of the Township of Camden did go to the middle of the river because the description of the boundary of the Township of Camden commenced at the middle of the river.

This case is a clear authority for the proposition that in New Jersey where the limits of a township are bounded *by* navigable river, the boundary only goes to the bank of the river and does not extend over the lands under water, and this notwithstanding that there may be a difference between the county and the township line.

It must be kept in mind that the Township of Greenville was not set off out of the County of Hudson, but out of the Township of Bergen which in its turn was not set off out of the County of Hudson, but out of the County of Bergen, and that at the time its boundaries were fixed New Jersey had no claim to lands under water in New York Bay and no claim for these lands. The Township of Bergen could not have included any lands under water because prior to the Compact of 1833 between New York and New Jersey printed in the Book, page 28, the State of New Jersey had no rights under lands under water under the Hudson River.

State v. *Babcock,* 1 Vr., 29, 33;
Corfield v. *Coryell,* 4 Wash. C. C., 384, F. C. 3230;

Handlys v. *Anthony*, 5 *Wheat*, 374, 5 L. Ed., 113;
Rose's Annotations to such case;
Henderson Bridge Co. v. *Henderson City*, 173 U. S., 612, 613, 43 L. Ed., 823;
Pea Patch Island, 3 Fed. Cases, 1147-8.

And as a matter of fact in the deed from Philip Carteret and his Council, granted Sept. 22, 1667 (Winfield Land Titles of Hudson, page 14) which is the foundation of the Township of Bergen and the only place that I know of where its limits are defined, a copy of which deed is annexed to this brief, the boundaries are defined as running along Kill Von Cull and "all along the Bay" and it is bounded on the east side "*by* Hudson's River" and on the south end "*by* Kill von Cull" that parts Staten Island and the Maine.

This clearly brings the case within *State* v. *Davies* and indicates that the Township of Bergen never had lands under water comprised within it and if it did not these lands cannot be within the limits of Jersey City for they could only be if previously comprised within the Township of Bergen.

And the original grant from Carteret of New Jersey (Winfield, page) the boundaries of which are set forth in detail in a memorandum annexed to this brief, provides that New Jersey should be bounded "by Hudson's River" and its lines should extend *to* the river.

In *Handley's Lessee* v. *Anthony*, 5 *Wheat.*, 374, 5 L. Ed., 113, the Court said: "Where a river is the boundary between two states, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream. But when, as in this case, one state is the original proprietor, and grants the territory on

one side only, it retains the river within its own domain, and the newly erected state extends to the river only, and the low water mark is its boundary."

The State of New Jersey was set off, from the State of New York, New York owning at the time it was set off all that is now comprised within both states.

In *Corfield* v. *Caryell*, 4 Wash., C. C., 324, F. C., 3230, the claim of New Jersey to lands below low water mark was held invalid.

In *State* v. *Babcock*, 1 Vr., 29, 1862, after the compact of 1833 it was held that an indictment would lie for a nuisance in obstructing the Hudson River by placing vessels and wrecks on the shore between the high and low water lines, but not for placing them below the low water line. "The exclusive jurisdiction in and over the waters of the Hudson, and in and over the land covered by those waters is in the State of New York, and not in the State of New Jersey."

In *Handly* v. *Anthony*, 5 Wheat., 374, the Supreme Court admitted that prior to the compact of 1833 the State of New Jersey had no right of property or sovereignty over the lands covered by the waters of New York Bay.

By the Compact of 1833 it is provided, Section 3, the State of New York shall have and enjoy exclusive jurisdiction over all the waters of the Bay of New York and of and over all the waters in the Hudson River lying west of Manhattan Island and to the south of the mouth of Spuyten Duyvil creek, and of and over the lands covered by the said waters to the low water mark on the westerly or New Jersey side thereof, subject to the following rights of property and jurisdiction of the State of New Jersey; that is to say:

(1) The State of New Jersey shall have the exclusive right of property in and to the land under water, lying west of the middle of the Bay of New York, and west of the middle of that part of the Hudson River which lies west of the middle of the Bay of New York and west of the middle of that part of the Hudson River which lies between Manhattan Island and New Jersey.

(2) The State of New Jersey shall have the exclusive jurisdiction of and over the wharves, docks and improvements made and to be made on the shore of the said State, and of and over all vessels aground on said shore, or fastened to any such wharf or dock, except that the said vessels shall be subject to the quarantine or health laws, and laws in relation to passengers of the State of New York, which now exist or may hereafter be passed.

(3) The State of New Jersey shall have the exclusive right of regulating the fisheries on the westerly side of the middle of said waters; provided that the navigation be not obstructed or hindered.

It is true that this Court in the case of the *Central Railroad Company* v. *Jersey City*, 209 U. S., 473, held that lands under water in New York Bay might be taxed by New Jersey, but it held that this was so because the compact gave to New Jersey the right of sovereignty over these lands, and this notwithstanding the fact that jurisdiction for all purposes for which a tax could be levied upon lands under water is retained in the State of New York.

But this does not affect the determination of the issue which is now raised, which is that prior to the Compact of 1833 the State of New Jersey

had neither right of property nor right of sovereignty over lands under the waters of New York Bay. That the County of Bergen, which was set off prior to the Compact of 1833, did not include any lands under water. That the Township of Bergen, which was set off before the Compact of 1833, did not include any lands under water. (And its boundaries stated in the memorandum annexed hereto so indicates.) That therefore when the Legislature carved out of the Township of Bergen the Township of Greenville and provided that the Township of Greenville should be bounded on the southeast *by* New York Harbor and that the next course taking it *to* New York Harbor should be "with a continued line running southeasterly from said avenue *to* New York Harbor, the Legislature intended that the usual meaning of these words should be applied, and under the general rule the limits of the township extended only to the navigable water.

The District Court said in its opinion (page 106):

> "There is nothing in the act creating the township of Greenville out of the town of Bergen, or of the town of Bergen out of the township of Bergen, out of the County of Bergen, or of the County of Bergen, that suggests a legislative intent to exclude from such boundaries a portion of the State's territory lying between the upland and its exterior boundary lines in New York Bay. In such case the presumption is, first, that in the dividing of the State's territory into counties, all of it, for government purposes, was intended to be included, and second, that in the subdividing of the County of Bergen, the same legislative intent was carried out."

The Circuit Court of Appeals, page 205, ex-

pressed the same idea, and also held that the position contended for by the appellant depended upon a narrow construction of the word "on."

The language is entirely inapplicable by reason of the fact that at the time these counties and townships were carved out New Jersey had no right either of property or of sovereignty to the lands under waters of New York Bay and never assumed to exercise such right, and the decisions of its own courts are to the effect that it had no such right. And the limits of the Township of Bergen were such as to exclude lands under water. The contention of the appellant does not rest upon the construction only of the word "on" but upon "to" and upon a construction of the contents of the entire acts in view of conditions pending at the time they were passed.

The Legislature therefore in using the words "on" and "to," which under ordinary circumstances meant just what they say, "on" and "to," must be assumed to have used them in their ordinary sense. As I have pointed out, if used in their ordinary sense the limits of the Township of Greenville did not extend into the harbor. They could not, for nothing was included within the Township of Greenville, which was not previously included in the Township of Bergen and the Township of Bergen certainly included no lands under water.

In *State* v. *Eason,* N. C. Supreme Court, 23 L. R. A., 520, it is held:

> "The jurisdiction of a municipality, bounded by a navigable river, does not extend beyond low water mark, in the absence of anything in the charter extending the limit of its jurisdiction expressly or by fair implication."

In *People* v. *Bouchard,* Mich. Supreme Court, 9 L. R. A., 106, it was held that the limits of the Town of Bangor extended only to the shore and on page 108:

> "It may be claimed that as the rights of the owners of the land bordering on the bay extend into the bay for a distance of one mile from the shore for the purpose of fishing, that perforce the boundaries of the township are likewise so extended. But this cannot be true. *The boundaries of a municipal corporation are fixed by law, and cannot be made to depend upon the fact that the owners of land within the limits have rights appurtenant extending beyond such limits.*"

This was a case that was upon a harbor such as is New York, and is particularly pertinent in the case at bar because of the attempted distinction the District Court below makes between the word "harbor" and the word "shore."

There is no such distinction.

The word "harbor" as used in the Legislative Act and in the Compact of 1833 referred to all of the water included within the Bay of New York and the harbor is of an area equal to the land covered with water. This case fully answers the statement of the Court of Appeals, p. 205, which is directly to the contrary.

I refer again to *State* v. *Davis*, 25 N. J. L., 386, where the general rule is admitted to be the rule in New Jersey, and where it is held that it makes no difference that by its operation some land may be within a town but no county or vice versa.

The District Court below in its opinion further says (page 106) and the Court of Appeals approved the language, p. 205.

> "To admit the contention of complainant under this head, a class of property than which none is more valuable, would escape taxation; not by express legislative exemption—the only way indicated in the cited enactments—but by a narrow construction of the word 'on' in running the Harbor boundary."

In *Gilchrist's Appeal,* 109 Pa., 600 the City of Wilkesbarre attempted to collect taxes on a body of coal land lying beneath the Susquehanna River. It was contended on the part of the City that its corporate limits extended to the middle or thread of the river. The court held that it did not go below low water mark, and that the City had no right to impose taxes on the coal land lying outside of its territorial limits even if these lands were not taxable elsewhere.

And the Court specifically said that the fact that the coal lands under the river if they could not be taxed by the City could not be taxed anywhere was no reason that they should be taxed by the city.

As a matter of fact, there is a potent argument why the lands in the case at bar should not be taxed by the city.

The lands are separate and apart from the rest of the City of Jersey City. They have no connection with it. They cannot be reached except by trespassing. They are entirely under water with no connection with the mainland. Are separated from the city by two lines of railroad and one canal; are absolutely isolated; are in a worse condition than unproductive farm lands; require no fire protection; no police protection; no health protection, receive no benefits from the Board of Education; require no labor of any kind on the part of any of the city's employees, officers or servants; secure

all the protection and the benefits that can be secured from the government under the compact of 1833, not from the State of New Jersey, but from the State of New York.

To tax these lands for municipal purposes of the City of Jersey City, from which they derive no benefit, would be a gross injustice, and that it would be such an injustice is a potent argument that the Legislature never intended to include them within the corporate limits of the City of Jersey City, but intended to make them as a class by themselves, which in fact they are.

Both Courts below cite the case of (p. 205) *Luke* v. *Brooklyn*, 43 Barb., 54 Aff. 1 Abb. Dec. 24, where it was held "For the purpose of ascertaining whether particular property is situated within the City of Brooklyn, the line of low water, as the water flows in the East River, after the land is reclaimed from the river, or by the erection of wharves and piers, and the filling in from the shore for the purpose is to be deemed the dividing line between the cities of New York and Brooklyn. The jurisdiction of the City of Brooklyn must from necessity follow the shore as it advances into the river, or bay whether the accretion proceeds from alluvion or artificial deposits and erections."

This case and that of the Matter of Brooklyn, 73 N. Y., 179 far from being authority against the complainant in the case at bar is authority in his favor. The Court held in both cases that the City went not out into the Bay but to *low* water mark. The court further held that after the lands had been reclaimed and became a part of the main land the jurisdiction of the City was by operation of law extended over them.

I find no fault with this rule. It is inapplicable

in the case at bar. It must be kept in mind that the lands in the case at bar are wholly under the waters of New York Bay and below low water mark so that whether the line of the land runs to high water mark or low water mark makes no difference.

I draw the court's attention to the case of *Johnson* v. *Jones,* 83 Atl., 1085, resting upon Santa Clara County against Southern Pacific Railroad Co., 118 U. S., 394, 30 L. Ed., 118 that if part of the tax is void and the tax is an inseparable tax the whole must be set aside.

The question as to the boundaries of Jersey City was open in the Court below, and is in this Court. In *Central Railroad* v. *Jersey City* (Sup. Ct. N. J.), Justice Garrison said:

> "There may be some question as to the technical boundaries of Jersey City under the various acts of the legislature creating the City and its constituent parts, but the prosecutor raises no question at this time" (p. 34).

IX.

The adjustment is illegal because the same adjustment is made a lien upon other land than the land upon which the original lien for various years taxes was imposed.

The lease describes minutely the area conveyed. It is further provided, however, that when the line for exterior filling should be advanced the area should be extended. It is proven in the case that about the year 1891 and again in 1900, the exterior line for solid filling was advanced. Thus, the area was changed.

Taxes for the various years were assessed upon the land as it then existed.

The Adjustment Commissioners in making up their report did not take into consideration this change of area, but have assessed a lump sum including the taxes for all the years upon the land as it now exists (pp. 99, 69, 75).

This is illegal and the entire assessment is void.

In *Johnson* v. *Jones*, 83 Atl. 1085, the Court said:

> "The tax in question was therefore assessed upon property, a part of which was exempt and a part taxable and there is no way of distinguishing that part of the tax which might have been lawfully assessed from that which was unauthorized. And since the inseparable tax is in part void, the whole is void."

Citing

> *Johnson* v. *Colburn*, 36 Vt. 695;
> *Libby* v. *Burnham*, 15 Mass. 147;
> *Santa Clara County* v. *Southern Pacific Ry. Co.*, 118 U. S. 394, 30 L. Ed. 118.

X.

The adjustment is illegal because there is included in it taxes for years the lien of which had expired, the appellant being a bona fide purchaser for value. The entire adjustment is illegal because there were no taxes prior to 1891, which were liens at the time of the adjustment.

It has been held that where the lien of the taxes has expired, the Legislature cannot reimpose the lien and cannot sell the property for non-payment of taxes as against a bona fide purchaser for value,

and it is stipulated that the complainant in the cases at bar is a purchaser for value.

Commissioners of Plainfield, 21 N. J. L. Jour. 334;
Griffiths N. J. Tax Adjustment Act, 109, 17 N. J. L. Jour. 23;
Harnett v. *Camden*, 37 Vr. 520;

in which latter case it was held that the Martin Act, under which this adjustment was had, did not extend the duration of the lien.

If lands are sold for taxes after the expiration of the lien, the sale is void.

Johnson v. *Van Horn*, 16 Vr. 136;
Field v. *West Orange*, 10 Stew. Eq., 434, 12 Stew. 60;
Kirkpatrick v. *New Brunswick*, 13 Stew. 56;
Doremus v. *Cameron*, 4 Dick. 1.

Taxes are not liens unless made so by the express provision of law.

The act incorporating the City of Jersey City, approved March 31st, 1871, provides, Section 151 (Ex. C. 8, p. 103):

> "That taxes shall be and remain a lien thereon from the time of the confirmation thereof until paid."

By an act approved March 10th, 1880, P. L. 1880, p. 149, it is provided that any and all taxes which should be assessed or imposed within any corporate city should be a lien:

> "For and during the *period* now provided for in the act of incorporation, or any supplement thereto or revision of the same of any such city, village, borough or other municipality aforesaid."

This act was amended by an act approved March 17th, 1882, Laws of 1882, p. 130 (Exhibit C. 11, p. 105), by the insertion of the proviso:

> "Or if no such period is provided, in such act of incorporation, supplement or revision for and during the period of three years."

By an act approved May 17th, 1898, Laws of 1898, p. 455, the Legislature provided (Exhibit C. 12, p. 106):

> "That any and all taxes which shall or may hereafter be laid, etc., on real estate, situate, lying and being in this state, shall be and become, from and after the twentieth day of December next after such assessment, a full and complete, first and paramount lien on such lands for a period of two years."

This act remained in force until the adoption of the Tax Act of 1903 (Exhibit C. 7, p. 103) which provided, Section 49:

> "That the taxes shall become a lien upon the twentieth day of December next after their assessment."

The District Court, p. 89, queried whether the act of March 17th, 1882, which provided that if no period was provided in the act of incorporation then the taxes should remain a lien for three years will repeal the special legislation of 1871 applying to Jersey City alone. And *Sheridan* v. *Stevenson*, 44 N. J. L., 371, is cited as authority for this query.

All that was held in *Sheridan* v. *Stevenson* was that where there is a special charter and a general act the general act will not be held as repealing special charter provisions unless the legislative intent is clear, but if the legislative intent is clear special charter provisions will be repealed.

The act to which the act of 1882, page 130, is supplemental is a general act concerning taxes, and the supplement is a general act and it was clearly the legislative intent to effect special charter provisions for the Legislature has said in the Supplement of 1882, page 130, that

> "any and all taxes which shall or may hereafter be laid, assessed or imposed, pursuant to the laws of this state, within any incorporated city, village, borough or other municipality of this state against any person or persons, or corporations for or on account of any lands, tenements, hereditaments, etc. * * * shall be and become and remain from and after the date of such levy and assessment a full and complete first and paramount, lien, etc. * * * *for and during the period now provided for in the act of incorporation, or any supplement thereto or revision of the same of any such city, village, borough or other municipality as aforesaid.*"

The Legislature specifically provides that this supplement is to affect special charter provisions. It provides that the taxes shall be a lien for and during the period provided for in such special charter provision "and if no such period is provided in such act of incorporation, supplement or revision for and during the period of three years." As a matter of fact, these supplements were adopted to avoid the effect of the supplement to the General Tax Act, March 14, 1879 (Exhibit C. 9, p. 104), which provides that all taxes assessed in any city, etc., should be a lien for two years, and to provide that this provision should not apply where there were special charter provisions fixing periods for the duration of the lien, but that in such case the lien should exist for that period spe-

cially provided, but if no period provided, then for three years. Were it not for these supplements, the general act of 1879 would apply, and the lien of taxes in Jersey City would be three years.

Thus, there is a clear legislative intent manifested that the taxes are to be liens for and during the period provided for by the charter, but if no such period is provided for in any charter then during the period of three years.

It is insisted that these supplements applied to Jersey City. The charter of Jersey City provided that taxes should be and remain a lien thereon from the time of the confirmation thereof until paid, and it is insisted that this is not a *period* and that Jersey City fell within the class where no period is provided by the charter the taxes remain a lien only for three years.

When the words in the act of 1880 are used, "for and during *the period* now provided for in the act of incorporation" a definite period was referred to.

The fact that the Legislature amended by the Supplement of 1882, the supplement of 1880, which had provided (L. 1881, p. 194) that taxes should remain liens for and during the period now provided for in the charter without making provision in case there was no period prescribed by the special charter indicates that the legislature intended that in all cases the length of the lien should be fixed at a definite period.

A period of time is a stated and recurring interval of time, the round or series of years, by which time is measured.

People v. *Lesak*, 67 N. Y., 521, 528.

In the case of *State* v. *Strauss*, 49 Md., 288, un-

der a statute authorizing the Board of Police Commissioners of a City to order the closing temporarily of any and all bar rooms and drinking houses in the City "during *such period* as the Board shall forbid" the Board adopted a resolution closing the places "*until further order of the Board.*" The Court said:

> "If any doubt or ambiguity arises upon the use of the terms 'temporarily' in one part of the section, it is removed by the word '*period*' in the subsequent part. Reading the whole clause and giving the words their ordinary and accepted meaning and import, it seems to us plain that the Legislature has declared that these orders shall operate, not only for a short, but for a *definite* interval or portion of time, to be specified on their face, and we are all of the opinion that the order, which by its terms is to operate until further notice, is unauthorized."

In the case of *Sampson* v. *Peaslee*, 20 How., 571, 15 L. Ed., 1022, the Court said:

> "The word 'period' has its etymological meaning, but it has also a distinctive and significant meaning according to the subject with which it may be used in connection. It may mean any period of *complete time*, from a thousand years, or less, to the period of a day, and when used to designate an act to be done or begun, though its completion may take an uncertain time, it must mean the day on which the exportation commences or it would be an unmeaning and useless word in its connection with the statute."

The word "period," therefore, as defined in the dictionaries and by the Courts means a complete and definite interval of time. The words "until paid" is not a period within the meaning of the

statute so that when the Legislature in 1882 adopted the act referred to, it affected the charter of Jersey City and limited the lien to three years.

And this was precisely the legislative intent.

Various charter provisions throughout the state had provided for uncertain periods of time that taxes were to remain liens. Just as in Jersey City it was provided that they should remain liens until paid. The legislature considered that a fixed and definite time should be provided for. It, therefore, provided that where under the charter provisions there were fixed and definite periods the taxes should remain liens during those fixed and definite periods, but where under the charter there was no fixed and definite period then the taxes should remain liens only for the period of three years.

The lien of all the taxes, therefore, subsequent to the year 1882 had expired at the time of the taking of the assignment of leases by the complainant by reason of this act of the legislature.

But again in 1888, the Legislature adopted another supplement to the General Tax Act, Laws 1888, p. 372, Exhibit C. 10, p. 105, providing that in cases of taxes assessed "any lands, etc., situate in this State" shall be a lien for two years. This supplement unquestionably affected taxes on all lands and operated generally throughout the State. It did away with any question of period or no period. It affected all lands alike and made no exceptions based on charter provisions.

And again in 1898, P. L. 1898, p. 455, Exhibit C. 12, p. 106, the general tax act was amended and in that act it was provided "that any and all taxes which shall or may hereafter be laid, etc., on real estate, situate, lying and being in this State, shall be and become, from and after the twentieth day of

December next after such assessment, a full and complete, first and paramount lien on such lands, for a period of two years."

This act of 1898 was a general act and applied to all classes of property and whether included within a city having a special charter provision or otherwise. This was not changed until the tax act of 1903 which provided, Section 49: "that the taxes shall become a lien upon the twentieth day of December next after their assessment." And no time is fixed for the expiration of the lien. (Exhibit C. 7, p. 103.)

The complainant did not secure his assignment of lease until the year 1904 and in the year 1904 by virtue of the legislation hereinbefore referred to the lien of all the taxes had expired, and it was not competent for the Legislature to permit the city acting through its adjustment commissioners to reimpose such lien.

In re Commissioners of Plainfield, 21 N. J. L. Journal, 334;
Griffiths N. J. Tax Adjust. Tax, 109, 17 N. J. L. Journal, 23;
Harnett v. *Camden,* 37 Vr., 520.

A. Neither the District Court or the Circuit Court of Appeals decided this question (p. 89). The District Court based its determination upon this reasoning. "Under the tax adjustment tax of March 30th, 1886, known and herein referred to as the Martin Act and which the record shows has been invoked by the defendants to adjust unpaid taxes, some, if not all, of the taxes challenged in these proceedings may be made the basis of a new lien." Citing *Jersey City* v. *Speer,* 72 Atl. Rep., 488. (This is an erroneous citation. It should be 448.)

The court misconceived the effect of this decision. What the Court there held was that unless there were arrears prior to the year 1891 *there could be no adjustment,* the Court saying:

> "We think it clear that the object of the supplement of 1891, if construed as the Circuit Court construed it, is not expressed in the title of the original act of 1886; hence, if such construction be given to it the supplement itself is an unconstitutional enactment which is but another way of saying that such construction should not, if possible, be given to it."
>
> "The result we reach is that under a proper construction of the supplement of 1891, the Circuit Court erred in confirming the adjustments reported by the commissioners in the cases of *National Railroad Company, New Jersey Warehouse & Guaranty Company, E. Caufield, F. L. Livermore, Christian Kaiser, L. Lilliendahl,* for the reason that in these cases there were no arrearages of taxes prior to the approval of such supplement."

The result is that if the lien of the taxes prior to 1891 had expired, the fact that there were unpaid taxes whose lien had not expired subsequent to 1891, did not give the Adjustment Commissioners power to adjust them.

Under the decision of *Jersey City* v. *Speer, supra,* it must be found that there were taxes prior to 1891, *whose lien had not expired.* This is not the case in the case at bar.

But even if some of the taxes could have been adjusted it does not follow that the complainant is not entitled to relief here.

The Court, in its opinion (p. 89), said:

> "The commissioners of adjustment to

whom these alleged arrearages of taxes were submitted for adjustment, had complete jurisdiction over that subject."

And further:

"If in the readjusting of the taxes, the commission has included in its findings taxes for years to which such presumption could be enforced, or for years the lien for which was lost at the time the premises passed into the ownership of the complainant, and could not thereafter be legally established against his ownership in such lands, an adequate remedy at law, by appropriate proceedings in the state courts, was at his command."

LASTLY.

The decree should be reversed and a decree made for the relief asked in complainant's supplemental bill.

MERRITT LANE,
Of Counsel for Appellant.

Dated from Philip Carteret and his Council, dated the 22nd day of September, 1667, to the Town and Freeholders of Bergen, which deed is the deed giving the boundaries of the Town and Township of Bergen:

"The bounds and limits of the aforesaid Towne and Corporation of Bergen is to begin at the North end thereof, from a place called Mordanis Meadow, lying upon the West side of Hudson's river, from thence to run upon a N. W. lyne by a Three rail fence that is now standing, to a place called Espatin, and from thence to a little Creek surrounding N. N. W. till it comes into Hackinsack river, containing in Bredth from the top of the Hill 1½ miles, or 120 chains, from thence it runs along the said Hackinsack river upon S. S. W. lyne till it comes to the Point or neck of Land that is over against Staten Island and Shooter's Island in Arthur Cull Bay, containing in length about 12 miles, and thence to run Eastward along the River called Kill van Cull, that parts Staten Island and the Main to a point or neck of Land called Constable's Point or Constable's Houck, and from thence to run up Northward all along the Bay up into Hudson's river till it comes to Mordanis Meadow aforesaid; so that the whole track of upland and Meadow property belonging to the Jurisdiction of the said Town and Corporation of Bergen, is bounded at the North end by a tract of Land belonging to Capt. Nicho. Verlett and Mr. Samuel Edsall. On the East side, by Hudson's river, on the South end by the Kill van Cull, that parts Staten Island and the Maine, and on the West side by Arthur Cull Bay and Hackinsack river, as it is more plainer demonstrated by a draught thereof made by the Surveyor-General, hereto annexed. The whole, both of upland and Meadows, and Waist land containing according to the Survey 11,520 Acres English measure," * * * "to con-

tinue and remain within the Jurisdiction, Corporation or Township of the said Towne of Bergen from the day or the date hereof forever" * * * "To be holden by them, the said Corporation or Towneship their heirs and successors, as of the Manor of East Greenwich, in free and common Socage."

"2ndly. That the Freeholders of said Corporation or Towneship are hereby jointly and severally obliged to pay or cause to be paid to the said Lords Proprietors, their heirs and Successors or to their Receivers General within the said Province, on every 25th day of March, according to the English Accompt, the sum of Fifteen Pounds Sterling, of good and Lawful money of England, or the Value thereof, in good and Current pay of the Country, as a quit-rent due to them for the whole said tract of Land above mentioned, in lieu of the ½d. Pr. acre mentioned in the concessions, which payment is to begin on the 25th day of March, which shall be in the year of Our Lord 1670, and so to continue forever without any charge, to the said Lords Proprietors or their Agent; and that all Pattents for land herebefore Granted, or to be Granted within the said Limitts, are to be accompted upon the aforesaid Rent of Fifteen Pounds Sterling pr annum."

In the course of time the payment of the reserved quit-rent was neglected, and finally refused. Hereupon the controversy arose between the proprietors and the freeholders of Bergen. Finally, Cornelius van Rypen, a freeholder, in the township, was arrested for the debt. A compromise was then agreed upon, and the freeholders of Bergen received a general release upon paying $1,500. This release was dated October 5, 1809.

Boundaries of New Jersey. Winfield's Land Titles of Hudson County page 10, Leaming & Spicer, page 3:

"On March 12, 1664, Charles II. granted unto his 'dearest brother James, Duke of York his Heirs and Assigns' inter alia 'all the Lands from the West side of Connecticut, to the East side of Delaware Bay' with powers of government. On the 23rd and 24th of June, 1664, by lease and release, the Duke conveyed to John, Lord Berkeley, Baron of Stratton, and one of the Privy Council, and Sir George Carteret of Saltrum, Knight and Member and the Privy Council, 'All that Tract of Land adjacent to New England, and lying and being to the Westward of Long-Island and Manhitas Island, and bounded on the East part by the main sea, and part by Hudson's River, and hath upon the West Delaware Bay or River, and extendeth Southward to the Main Ocean as far as Cape May at the Mouth of Delaware Bay and to the Northward as far as the Northermost Branch as the said Bay or River of Delaware, which is forty-one Degrees and forty Minutes of Latitude, and crosseth over thence in a straight Line to Hudson's River in forty-one Degrees of Latitude which said Tract of Land is hereafter to be called by the Name or Names of Nova Ceaserea or New Jersey."

Supreme Court of the United States.

SUPREME TERM, 1933.

No. 6

DANIEL J. LEAHY

Appellant,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY, and THE CITY COLLECTOR OF THE CITY OF JERSEY CITY, a Municipal Corporation,

Defendants.

On Appeal from the District Court of Appeals for the Third Circuit.

SUPPLEMENTAL BRIEF FOR APPELLANT.

JOHN W. ANGELO,

Of Counsel with Appellant.

Supreme Court of the United States,

OCTOBER TERM, 1918.

No. 3.

DANIEL J. LEARY,
Appellant,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and the CITY COLLECTOR OF THE CITY OF JERSEY CITY, *et als.*,
Defendants.

ON APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

SUPPLEMENTAL BRIEF FOR APPELLANT.

This appeal involves the validity of an accumulation of taxes assessed by the City of Jersey City for the year 1883, and each subsequent year to the present time, against lands at all times actually submerged by the tide waters of New York Bay. No upland whatever is included.

The taxes directly involved, as stated in the supplemental bill, comprise original taxes from 1883 to 1907, totalling, as adjusted, $108,639.20, to restrain the collection of which this suit is prosecuted.

Pending the suit subsequent taxes have been assessed by the City each year, now totalling the further sum of about $ 133565.25

The City claims the right to collect a statutory penalty for the non-payment of all above taxes, so that the total amount for which the City claims the right to sell this property is approximately the sum of $398000.

The lands in question comprise an area from high water mark to pierhead line of approximately 267 acres, with a front on the pierhead line of approximately 1,200 feet and extending from the shore into the Bay of New York about 7,500 feet. The land is actually submerged and without any improvements whatever thereon and is actually navigable and navigated by light draft vessels.

Without intending to divert attention from the exhaustive discussion of the numerous points in controversy in appellant's original brief filed by Mr. Lane, we desire to emphasize, in addition, a single point in the light of decisions of the New Jersey Courts announced since the filing of the original brief.

POINT I.

The lease in question grants the submerged lands (whether by way of lease or in fee is immaterial under this head) with "the right, liberty, privilege and franchise to exclude the tide water from so much of the lands above described as lie under water, by filling in or otherwise improving the same and to appropriate the land above described to their exclusive private use." Such grant confers a mere license to reclaim, which, although vested, does not constitute the licensee an owner of the land or extinguish the rights of the public therein unless and until the license is executed by actual reclamation. Such interest as the lessee has before reclamation is insufficient to sustain taxation against him as the owner of the land.

Before discussing the particular instrument involved in the present case, consideration of the evolution of the law in New Jersey respecting the title to lands under tide water, may be helpful.

Prior to 1851 there was no general statute affecting the subject.

Some few private grants had been made by private legislative acts. These grants were variable in form.

Practically the entire improvement of riparian lands which had then occurred in the State was pursuant to the sanction of a local common law which recognized the absolute title of the riparian owner as extending to the high water mark, with a privilege to reclaim the shore to low water mark, and, perhaps, beyond, and to build piers and wharves out into the water. This privilege when

exercised by actual improvement operated to create a title to the land actually improved, good even against the State.

Bell vs. *Gough*, *23 N. J. Law, p. 624*, decided in 1852, by unanimous vote of the Court of Errors and Appeals.

That case decided that the title acquired by a riparian owner to lands below high water mark actually reclaimed, was good against a subsequent grant from the State under a private legislative grant. This privilege of reclamation was, however, at the sufferance of the State until actual reclamation.

See also

N. Y., L. E., &c., R. R. vs. *Yard*, *43 N. J. L. 632, 636.*

The questions raised in *Bell* vs. *Gough* (which was before the New Jersey Supreme Ct. in 1850) lead to the enactment of the so-called "Wharf Act of 1851". (P. L. 1851, p. 335).

This act authorized the riparian owner

> "to build docks or wharves upon the shore in front of his lands and in any other way to improve the same *and when so built upon or improved, to appropriate the same to his own exclusive use.*"

It also authorized the riparian owner to make like improvements in front of his land below the low water line, in such manner as not to interfere with navigation, upon obtaining a license from the County Board of Chosen Freeholders.

The obvious purpose of requiring a license for improvements beyond low water, was to place some regulation upon the extent of the improvement. There was no uniform exterior line for filling or piers prescribed and the regulation of that matter was left to the judgment of the Freeholders in each particular case.

Justice Swayze, speaking for the New Jersey Supreme

Court in 1907, in *Heiney* vs. *Nolan*, *75 N. J. Law 397*, says:

> " By the common law of this State, if the owner of land bounded by the shore upon tide water, make improvements upon or reclaim the shore adjoining his lands, the part of the shore so improved or reclaimed belongs to him and cannot be granted by the State. . . . The subject was regulated by the Act of March 18, 1851, commonly referred to as the Wharf Act. . . . Under the law as it stood prior to 1891, the defendant could acquire title as far as the low water mark, by improving the shore."

Apparently with the object of producing uniformity in the improvements which theretofore had been without any uniform regulation, the Legislature in 1864 passed an Act, " to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in the State". (P. L. 1864, p. 681.)

This Act provided for the appointment of riparian commissioners, who were to make a survey of certain lands under tide-water belonging to the State (including lands in New York Bay) and recommend an exterior line for solid filling and piers, and report to the Legislature thereon.

In 1869 the Legislature adopted the bulkhead and pierhead lines recommended by the Commissioners, for Hudson River, New York Bay and the Kill von Kull, and provided for the granting or leasing thereof to riparian owners, under written instruments to be executed by the Commissioners in the name of the State. (P. L. 1869, p. 1017.)

As pointed out in the decisions hereafter cited, this Act dealt with two distinct classes of persons, viz.: (Section 4) those who were already grantees or licensees of the State's lands under prior legislative acts, and, secondly (Section 8), any other person desiring a grant for lands under water " which have not been improved, and are not

authorized to be improved under any grant or license protected by the provisions of this Act."

Section 4 provided that the first class "shall be entitled" to an instrument executed by the Commissioners, granting the title and benefits described in the section, either as a lease in perpetuity or a "conveyance" "in fee" upon payment of an arbitrary rental or purchase price specified by the act.

This Section further provides that the conveyance or lease "shall not merely pass the title to the land therein described, but the right of the grantee or licensee . . . to exclude to the exterior bulkhead line the tide water, by filling in or otherwise improving the same and to appropriate the land to exclusive private uses", together with the perquisites of wharfage.

Section 8, dealing with the second class of persons, provides that upon application, the Commissioners shall designate the lands to be covered by their grant or lease, within the exterior lines prescribed by the Act, and shall fix the reasonable compensation or annual rentals to be paid therefor, and upon paying the price or rental—

> "it shall be lawful for such applicant to apply to the Commissioners for a conveyance assuring to the grantee . . . the land under water so described in said certificate; and the said Commissioners shall, in the name of the State . . . grant the said lands in manner last aforesaid . . . and upon the delivery of such conveyance, the grantee may reclaim, improve and appropriate to his and their own use, the lands contained and described in the said certificate . . . and such lands shall thereupon vest in said applicant."

Section 3 of the Act repeals the Wharf Act as to the tide waters of Hudson River, New York Bay and Kill von Kull, and provides that henceforth no person shall fill in or reclaim any of the land under said tide-waters, saving legislative grants therefore made and improvements actually made under the Wharf Act.

In 1871 a supplement to the above act was passed enabling the riparian commissioners to make a lease, grant or conveyance to any riparian owner on any of the tide-waters in the State, which

> "lease, conveyance or grant shall be executed as directed in the Act to which this is a supplement and the supplements thereto, and shall vest all the rights of the State in said lands in said lessee or grantee."

This supplement further provided that it

> "shall not interfere with the original act or its supplements as to the waters of the Hudson River, New York Bay or Kill von Kull". (P. L. 1871, p. 44—approved March 21, 1871.)

Later in the same session the Legislature passed an independent Act, entitled "An Act relative to the Riparian Commission", the preamble stating:

> "Whereas applications are frequently made to said commission for grants and leases of lands *which were heretofore but are not now under tide water*, and it is desirable to quiet the possession of those who so apply, but doubts have arisen whether such cases are now provided for by law" etc.

The body of the Act enabled the Riparian Commissioners in all cases of application for grants or leases of land now under tide water; and in all cases of applications for grants or leases of land which are not now or shall not at the time of the application or at the time of the lease or grant, be under tide water, notwithstanding anything contained in the above mentioned supplement of 1869, to grant or lease or lease first with a covenant to grant, and grant afterwards, for such principal sum that the interest thereof at seven per cent. will produce the rental, such lands or any part thereof lying between what was at any time heretofore the original high water line and the exterior lines established or to be established, and grant or lease in

all cases in which, in their discretion, they shall think such grant or lease should be made; such rights, privileges and franchises as they are authorized to grant in cases coming directly within said Fourth section (of the Supplement of 1869) and enter into the same covenants in the name of the State in all cases of grants or leases where they deem such covenants proper, as are authorized in grants or leases under said Fourth section, and insert such other covenants, clauses and conditions in said grants or leases as they shall think proper to require from the grantee or lessee, or ought to be made by the State. (P. L. 1871, p. 113, approved April 6, 1871.)

In 1874 a further supplement to the Act of 1864 was passed, empowering the riparian commissioners, together with the Governor, to fix the price or purchase money or annual rental to be paid by any applicant for any of the lands of the State then or formerly under tide water.

(Apparently this was intended to supersede the arbitrary fixed price and rental prescribed by Section 4 of the Supplement of 1869.)

The riparian leases and grants referred to in the various decisions of the Courts of New Jersey, are not limited by the particular statute under which the Commissioners acted in making the same.

It will also be observed that the form of lease and grant has not at all times been uniform, and that important variations are to be observed among the several instruments construed by the Courts.

Throughout all of the above legislation, the provisions for the granting or leasing of the State's lands are coupled with the express power to enter upon and reclaim the same, and appropriate to private uses.

Furthermore, the express prohibition of Section 3 of the Act of 1869 still prevails, prohibiting the filling in or building structures upon any of the lands under water, without the grant or permission of the Riparian Commissioners.

We think there is discernable in all this legislation a recognition of the local common law from which it origin-

ated, namely, that the rights of the public in lands under tide water and to the fee of said lands and the waters flowing the same, remain unimpaired until after reclamation and that even though the license of the riparian owner to reclaim, which was at common law revocable until exercised, may now become irrevocable under a statutory grant from the state, nevertheless the right to possess for exclusive private uses, which is the attribute of ownership, does not arise until actual reclamation.

In any event, we think the present case is ruled by the unanimous decision of the New Jersey Court of Errors and Appeals in *Polhemus* vs. *Bateman, 60 N. J. Law 163*, (*1897*) opinion by Justice Van Syckle.

Bateman held a riparian lease for lands under water executed pursuant to the Act of March 21, 1871, and purporting to grant a lease of lands under water "with the right, privilege and franchise to exclude the tide water from so much of the lands above described as lie under tide water, by filling in or otherwise improving the same, and to appropriate the lands above described to his exclusive private uses." Bateman thereupon sued Polhemus to recover damages for trespass to said lands under water. The alleged trespass consisted in taking oysters from an oyster bed located on the lands under water. (*Polhemus* vs. *State, 57 N. J. Law 348.*)

The Court held:

> "The grant by the State must be strictly construed" (p. 166).

Further:

> "The State may grant the exclusive right to take oysters and to its lands under water. . . . But until such grant is made, the public right of fishery exists (p. 166).
>
> "Conceding that the grant may vest in the grantee of lands under water all the rights of the state in the lands granted and thereby exclude the public rights which previously existed, it seems equally clear that the conveyance *need not neces-*

sarily be so comprehensive. The State as well as the individual may limit the extent of its grant. The language of the conveyance must measure what passes by it, and the grantee can acquire nothing in excess of that because of the existence of a power to enlarge the grant.

. . . . .

The question in this case is not what might have been granted to Bateman, but what is the extent of the grant to him, applying the rule of strict construction in favor of the state.

The Act of 1871 provides that the conveyance shall be executed as directed in the act to which it is a supplement.

Section 8 of the act of 1869 prescribes the manner of execution.

The deed was executed in the prescribed form, but it does not, in terms, grant all the rights of the state in said lands to the grantee. On the contrary, it contains the provision hereinbefore recited, setting forth the purposes for which said coveyance was made. That provision was manifestly intended to give to the grantee such rights as he would have been entitled to under a grant made exclusively under the eighth section of the act of 1869.

That section provides that, upon delivery of the deed, 'the grantee may reclaim, improve and appropriate to his and their own use the lands conveyed.'

The statute does not require that this provision shall be inserted in the deed; it does not enter into the form of the conveyance, but simply provides what its effect shall be when delivered. That effect must be accorded to it unless it contains some provision narrowing its scope.

So it may be admitted that the deed to Bateman, under the act of 1871, in the absence of any language limiting its operation and effect, would have passed to him all the rights of the state in the lands under water, but the deed contains the provision that he is to have the right, liberty, privilege and franchise to exclude the tide-water from so much of the land as lies under tide water by filling in or otherwise improving the same, and to appropriate the lands to his exclusive private uses.

This language restricts the grant, and nothing

in excess of it passes to the grantee. His rights under it must be interpreted by the words of the conveyance.

He may fill in or otherwise improve the same and appropriate the lands so improved to his exclusive private uses.

If he is permitted to appropriate the lands to his exclusive private uses without filling in or improving, no effect is given to the previous language, and the deed will be given the same effect as if it contained only the provision that he could appropriate the lands to his own exclusive private uses. Such a construction of the deed, under the well-settled rules of interpretation, is inadmissible. The state made the grant, and Bateman accepted it in this form, and *it cannot be enlarged beyond the clear meaning of the words used. Bateman acquired no title to the exclusive use of any portion of the land under water until he filled in and reclaimed or improved it. The grant was only for the purposes of reclamation.*" (Italics ours.)

The precise point now in controversy, namely the liability to municipal taxation by Jersey City, of lands held under a grant from the State, but which have never been reclaimed, was decided in 1915 by the N. J. Supreme Court in *Long Dock Co.* vs. *Board of Equalization of Taxes, 87 N. J. Law, p. 22.*

Justice Swayze writing for the Court says:

"A new pier line was established in the Hudson river in 1913. The effect was to permit the Long Dock Company to extend its pier further out into the river. The city conceived that this made the land under water in front of the former pier line taxable, although nothing had been done to reclaim it and no use was made of it except as boats might sail over it. . . .

The question, therefore, is whether the Long Dock Company had title to this land under water. By the charter of the Long Dock Company (P. L. 1856, p. 67) it was authorized to improve all lands under water that should be purchased or held by them or erect buildings thereon and lay out the land into blocks etc. and was given liberty to fill

> up, raise, occupy, possess and enjoy as their own property all lands covered with water which they might hold or purchase or which might lie in front of lands along any shore which they might hold or purchase; and to build, enlarge and improve on such lands any dock, wharf, pier, bulkhead, slip or other structure; provided, that in carrying out the provisions of the act they should not injure the navigation of the Hudson river and should not interfere with the legal rights or privileges of others, or fill in or reclaim any lands under water except in front of the lands which they might purchase along the shore. The nature of the right conveyed by a charter of this character is similar to that conveyed under the Riparian Act, and the rule established by the Court of Errors and Appeals in Polhemus *vs.* Bateman, 60 N. J. Law 163, is applicable. It was there held that Bateman acquired no title to the exclusive use of any portion of the land under water until he filled in and reclaimed or improved it, and that the grant was only for the purposes of reclamation. Following this rule, the right of the Long Dock Company in this case *does not amount to a legal title until the land is reclaimed. It is, therefore, not assessable as a separate tract.* . . . The present assessment must therefore be set aside, with costs." (Italics ours.)

The same question was involved with other questions in *Long Dock Co.* vs. *State Board of Assessors, 89 N. J. Law, p. 108* (Sup. Ct. 1916). That case involved the validity of tax assessments made by Jersey City against a large number of parcels, presenting different questions of law and fact. One of the parcels consisted of water front land to which had been added a large increment because of the extension of the pierhead line in the Hudson River in 1913, referred to in the previous case.

Justice Parker, in announcing the opinion of the Court, says (p. 116):

> "There was an additional value placed by the board on the water front tracts for 1914 because of the extension of the pier line in the Hudson river

> in 1913. This did not confer a title to the land under water between the old and new pier lines, Until the land is reclaimed. Long Dock Co. *vs.* Board, *supra.*" (Presumably refers to 87 N. J. Law 22.) "It was further held in that case, that the addition, if any, to the value of the upland should be taxed with the upland. . . . Whether any increase in the upland value is supportable on the evidence, we think is doubtful; but we are in no doubt that an increase approximately equal to seventy-five per cent. of the additional area valued as upland, *for a mere privilege,* is out of all reason, and as there is nothing before us as a proper basis for the valuation of the increment, if any, the amount of increase on this account will go back to the board."

This case was unanimously affirmed by the Court of Errors and Appeals, *90 N. J. Law, p. 702, 101 Atl., p. 367.* See also *N. Y. L. E. & W. R. R.* vs. *Yard, 43 N. J. Law 632, 636.*

It is submitted that the nature of the estate or interest of the appellant in the present case in the *locus in quo* depends upon the construction of the statutes of the State of New Jersey, as well as of the terms of the indenture of lease executed by the Riparian Commissioners in execution of a purely statutory power, and that the decision of the Court of Errors and Appeals in *Polhemus* vs. *Bateman* construing that statute, and defining the effect of the grant thereunder, is controlling everywhere.

Nor do we understand that there is any decision by the New Jersey Courts in conflict with the above decisions, having in mind the particular facts involved in each case.

The cases relied on by respondent are

> *Hudson Tunnel Co.* vs. *Attorney General, 27 N. J. Eq. 573;*
> *Cook* vs. *Bayonne, 80 N. J. L. 596;*
> *Ocean Front Improvement Co.* vs. *Ocean City Garden Co., 103 Atl. Rep. 419.*

The first mentioned case, *Hudson Tunnel Co.* vs. *Attorney General,* was decided in 1876. The Tunnel Com-

pany had instituted condemnation proceedings for a tunnel under lands formerly below high water mark, then held by the Morris & Essex Railroad Company under a riparian lease. The proceedings also included lands lying in front of the lands leased to the Railroad Company, extending easterly to the middle line of the Hudson River. The latter land lay entirely under water and unquestionably belonged to the State. The Attorney General acting on relation of Riparian Commissioners sought an injunction restraining the condemnation proceedings against both tracts, claiming that the state owned the reversion to the land covered by the lease and was the absolute owner of the ungranted lands lying beyond the leasehold.

The Court denied the injunction upon the ground that the lessee might lawfully have constructed the tunnel without injuring any interest of the state, and that such right might therefore be acquired from it through condemnation.

The opinion of the Court of Errors does not deal with the question of actual reclamation, and does not specifically state whether or not the leased lands had been actually reclaimed. It refers, however, to the case of *Morris & Essex Railroad Company* vs. *Hudson Tunnel Co., 38 N. J. L. 548*, as establishing the right of condemnation against the lessee with respect to the identical lands, and the opinion in that case shows unequivocally that the lands had been actually reclaimed.

Furthermore, an examination of record of the riparian lease there in controversy as recorded in the office of the Riparian Commissioners of New Jersey (book B. of Grants and Leases, p. 304) shows that the lease purported to be made pursuant to the Act of April 6, 1871, *supra*, the preamble of which reads:

> " Whereas applications are frequently made to said Commission for grants and leases of lands which were heretofore *but are not now under tide water,* and it is desirable to quiet the possession of those who so apply, but doubts have arisen whether such cases are now provided for by law. . . ." (Italics ours.)

Cook vs. *Bayonne*, *80 N. J. L. 596*, is a decision of the Supreme Court in 1910, bringing up an assessment of the City of Bayonne against lands on the Newark Bay Front held by the Taxpayer under a riparian lease.

The case was argued before Justices Parker and Bergen sitting alone for the Supreme Court, and the opinion is written by Judge Parker, who is the same judge who sat with the Court and concurred in the opinion of Judge Swayze in 1915 in the case of *Long Dock Company* vs. *Board of Equalization*, *supra*, and is the same Judge who later, in 1916, wrote the opinion of the Supreme Court in *Long Dock Co.* vs. *State Board of Assessors*, *supra.*

Apparently either Judge Parker must have considered that his earlier opinion in *Cook* vs. *Bayonne*, as applied to the facts of that case, was not inconsistent with his later decisions dealing with cases where actual reclamation was expressly made the point of decision, or else he had changed his opinion in the meantime and was content that the two later decisions should overrule his earlier opinion in silence.

It is quite obvious that the point now raised was not argued nor decided in *Cook* vs. *Bayonne*, even if the facts involved in that case were susceptible of such argument, which cannot be determined from the opinion.

Apparently the only objection to the tax was on the ground that lands held under a riparian lease were not subject to taxation, and the only thing decided was "that what the prosecutrix took under the so-called lease of 1889 was a fee subject to rent charge and the right of re-entry and distress as reserved."

Ocean Front Improvement Co. vs. *Ocean City Gardens Co.*, *103 Atl. Rep. 419*, was a suit to quiet the title to lands covered by a riparian lease as against a mortgage. Vice Chancellor Leaming says:

> "The primary inquiry is to ascertain whether at the time the mortgage was executed, the mortgagor enjoyed merely a leasehold estate in the tidal lands with an option of purchase, or an estate in

> fee. . . . In three reported cases consideration has been given to the ascertainment of the estate which passes to a lessee under our statutory convertible riparian lease."

The Vice Chancellor then discusses *Hudson Tunnel Co.* vs. *Attorney General, 27 N. J. Eq. 573;*

Cook vs. *Bayonne, 80 N. J. L. 596,* and the present case of *Leary* vs. *Jersey City, 189 Fed. 419, and 208 Fed. 854.*

He does not in any way refer to *Polhemus* vs. *Bateman* or either of the Long Dock Company cases. His decision is:

> "that the statutory lease here in question like the leases under consideration in the three cases first above cited must be deemed operative to vest in the lessee an estate in fee in the tidal lands described, subject to a condition in the nature of a condition subsequent consisting of a rent charge."

It is thus apparent that the question of reclamation was not involved and it is impossible to tell from the opinion whether or not the lands covered by the lease were in fact reclaimed or were under water.

Moreover, the lease there in question was materially different from that herein involved.

The Leary lease was executed pursuant to the Act of 1869 which applied only to the Hudson River, New York Bay and Kill Von Kull. The Ocean Front lease was executed under the Act of 1871.

The latter act contains a provision peculiar to itself, not found in the Act of 1869, which was strongly relied upon by the Vice Chancellor, viz.:

> "which lease etc. shall vest all the rights of the State in said lands in said lessee or grantee".

Moreover, the lease itself contains a clause not found in the Leary lease. The lands are granted by description:

> "With a right and privilege under the covenants and conditions of this grant, to exclude the

> tide water from so much of the lands above described as lie under the tide water, by filling in or otherwise improving the same, *and to appropriate the lands under water above described* to its and their exclusive private use." (Italics ours.)

The Leary lease does not contain any provision for appropriating the lands while under water.

In conclusion upon this point, we urge that the construction of the statute and the application of the precedents above contended for, is consonant with substantial justice, both to the municipality and the lessee.

In this respect, we think there is an erroneous conception, apparent in the opinion both of the Circuit Court and the Circuit Court of Appeals.

The latter court says:

> "In that regard the Court below well said . . . 'to admit the contention of complainant under this head (here referring to the contention that the land was not within the boundaries of the city) a class of property than which none is more valuable, would escape taxation'" etc.

In this there seems to us an unavoidable suggestion that both courts were animated with the idea that this property should not, in any event, escape from taxation.

To us it seems, however, that there is no class of property right conceivable which can derive less benefit from the blessings of municipal government in Jersey City, than this privilege to reclaim, prior to its actual exercise.

Until actual reclamation the lessee has no greater right in the waters or in the land under the waters than any other member of the public. So much was decided by *Polhemus* vs. *Bateman, supra.*

Even the theoretical advantages of police and fire protection which he may enjoy in common with all others while sailing over the waters, is furnished by the State of New York, and the State of New Jersey is expressly ex-

cluded from the exercise of such jurisdiction by the compact between the States.

There seems no reason why a property right of this character should be the subject of taxation for municipal purposes.

It should not justly be taken to pay the cost of maintaining a purely municipal government from which it can obtain no possible benefit. To do so is the taking of a private property right for public use, without compensation.

But not only is this property subjected to municipal taxation, but we think that it may fairly be said that it is discriminated against.

By reason of its proximity to other tidal lands held by the great railroad corporations for present or future terminal purposes, it has been assessed upon valuations which will sustain, upon comparison, the assessments levied against these railroad lands.

In *Central R. R. of N. J.* vs. *Jersey City, 199 Fed. Rep. 237*, the United States District Court for the District of New Jersey restrained the City of Jersey City from collecting taxes assessed against railroad lands on this same water front upon proof that the other lands in the City were consistently undervalued, so as to throw an unjust proportion of taxation upon the railroad property.

The opinion in that case is eloquent in its suggestion of the injustice involved in the taxes here under review.

JOHN M. ENRIGHT,
Of Counsel with Appellant.

7.

Supreme Court of the United States

OCTOBER TERM, 1918

NO. 3.

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DANIEL J. LEARY,

Appellant,

v.

THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and THE COLLECTOR OF THE CITY OF JERSEY CITY,

Appellees.

Appeal from the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR APPELLEES.

JOHN BENTLEY,
Attorney for Appellees.

JOHN MILTON,
EDWARD P. STOUT,
Of Counsel.

Supreme Court of the United States

OCTOBER TERM, 1918.

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DANIEL J. LEARY,

Appellant,

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THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY and THE CITY COLLECTOR OF THE CITY OF JERSEY CITY,

Appellees.

Appeal from the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR APPELLEES.

The appellees controvert the statement of the case as presented by the appellant, and respectfully refer this Court to the essential and decisive facts succinctly stated in the opinions of the Courts below. 189 Fed. 419 (Rec., pp. 78-90), 208 Fed. 854 (Rec., pp. 202-208).

The questions involved are:

1. Whether the instrument in question is a lease or whether it conveyed an estate in fee (Rec., pp. 15-18);

2. Whether the lands described in and conveyed by said instrument are within the taxing district of Jersey City, and subject to taxation;

3. Whether the findings of the Commissioners of Adjustment are conclusive in the instant case.

ARGUMENT

POINT I.

The conveyance of the State of New Jersey to appellant's assignor granted an estate in fee simple, upon condition subsequent.

The instrument in the case at bar made between the State of New Jersey and The Morris and Cummings Dredging Company and assigned by the latter to the appellant contains the following granting clause: "doth hereby bargain, sell, lease, and convey unto the said The Morris and Cummings Dredging Company, and to its successors and assigns forever" (Rec., p. 16). It also contains *an habendum* and *tenendum* clause in fee (Rec., p. 17) and reserves to the State, the payment of an annual rental to be paid to it by the grantee, its successors and assigns (Rec., p. 17), with right of re-entry and of distress in case of non-payment of same (Rec., p. 18), and provides for a conveyance to the grantee, its successors and assigns, free and discharged from the rent, on payment to the State of a stipulated gross sum (Rec., p. 18), and covenants that the State will not make or give any grant, license, power or authority to any other person or corporation, affecting lands under water in front of said lands hereby leased (Rec., p. 18).

It is to be noted that the conveyance the State covenants and agrees to make upon the payment of the entire consideration is to free and discharge the lands from the rent charge, and is in the nature of a release and not the grant of the fee (Rec., p. 18).

> See *Ocean Front Improvt. Co.* v. *Ocean City Garden Co.*, 103 Alt. (N. J. Eq.) 419, 421.

Manifestly, the fee was conveyed by the instrument under consideration.

Such an instrument has been squarely passed upon by the Courts of New Jersey in the following cases, and held to convey an estate in fee simple with a condition subsequent:

> *Hudson Tunnel Co.* v. *Attorney General*, 27 N. J. Eq. 573;
> *Cook* v. *Bayonne*, 80 N. J. L. 596;
> *Ocean Front Improvt. Co.* v. *Ocean City Garden Co., supra.*

The United States Circuit Court, in the instant case, 189 Fed. 419, 427 (Rec., p. 85), following the New Jersey authorities, said: "By this instrument, the State parted with the whole estate as effectually as if the consideration had been paid in one sum. The instrument contemplated two methods of paying the consideration, an annual sum equal to 7 per cent. of the entire consideration, as directed by the joint resolution of March 17, 1870, and a lump sum, at any time at the option of the purchaser, whereupon another conveyance was to be executed and the annual payments cease. The right, title, and interest of the purchaser were the same which ever method of payment was adopted. So long as the purchaser made the an-

nual payments, the estate vested in it was as absolute as if the entire capital sum had been paid in the first instance. The use of the words 'lease' and 'rent' does not change the quality of the estate where the whole interest is conveyed. Substance, not form, controls. A lease never conveys all that the owner has. That at some time and by the very terms of the instrument itself the estate shall revert to the lessor, his heirs or assigns, is of the essence of a lease. In the present case, a default in the annual payments causes a forfeiture; but this is not the necessary result of the terms of the conveyance. It provides for such a contingency, but does not require it. The conveyance transferred the whole estate to the purchaser. Only his disregard of the terms can end it and cause a reversion."

That Court further said, page 428 (Rec., p. 86): that "the estate conveyed is an estate in fee simple, with a condition subsequent, the condition being that if the annual payments are not made when due, the estate may be defeated. * * *"

The United States Circuit Court of Appeals, in affirming the decree of the United States Circuit Court, in the instant case, 208 Fed. 854 (Rec., 206) concurred in this conclusion.

It is to be observed that the instrument in question, by virtue of the statute (*Compiled Statutes of N. J.*, Vol. 4, p. 4390), vested in the appellant all the rights of the State, in the lands conveyed.

The statute provides: "Which lease, conveyance or grant shall be executed as described in the act, * * * and shall vest all the rights of the State in said lessee or grantee."

The appellant relies on *Polhemus* v. *Bateman*, 60 N. J. L. 163, to have the instrument under review construed to be a lease. In that case, Bate-

man's ownership of the ripa was raised and it also appeared that he had not reclaimed the lands under water, described in his grant from the State. The Court held that in a suit for trespass, Polhemus could challenge the fact of Bateman's ownership of the ripa and that, until Bateman reclaimed the land under water, he acquired no exclusive right to it, except so far as might be necessary to enable him to make reclamation. These questions are not in point in the instant case; they are not raised in the record, consequently, cannot be considered.

Furthermore, the appellant admits that all the lands against which the taxes were levied were included in the area conveyed by the instrument (Brief for Appellant, p. 108).

It is respectfully submitted that the instrument is more than a lease, and conveyed to the grantee, the lands described therein in fee, upon condition subsequent, and the land is taxable to the grantee's assignee, as the owner thereof. This disposes of Points I, II, III, IV, VI and VII of Brief for Appellant.

POINT II.

The lands described in and conveyed by the instrument are within the taxing district of Jersey City, and subject to taxation.

The lands conveyed by the instrument are described as "All that tract of land under waters of the Bay of New York in the City of Jersey City, in the County of Hudson and State of New Jersey, described as follows:" (See particular description, Rec., p. 16):

"And also all and singular the lands under water between the above mentioned exterior line for solid filling and the exterior line for piers mentioned in said Act first recited and the most easterly line of the above described tract extended southerly to said pier line and the most westerly line of the above described tract extended southerly to said pier line" (Rec., p. 17).

"And with the right, liberty, privilege and franchise of building piers along on the land east above described that is to say, that which lies between the said exterior lines already fixed above mentioned" (Rec., p. 17).

And if and when said exterior lines shall be fixed at any other points or places further into said bay also any and all lands lying under water between the present exterior line for solid filling above described and said new exterior line or lines for solid filling and within the extension of the easterly and westerly lines aforesaid extended southerly to said new exterior line for solid filling, with the right, liberty, privilege and franchise of excluding the lands lying within the bounds last mentioned the tide water by filling in or otherwise improving the same and to appropriate the lands above described to their exclusive private uses" (Rec., p. 17).

"And if and when said exterior lines shall be fixed at any other points or places further out into said Bay; also any and all lands lying between the new exterior line or lines for solid filling and within said easterly and westerly lines extended southerly to said new pier line or lines with the right, liberty, privilege and franchise of building piers along upon the land last mentioned. Together with all the right so far as the upland from time to time made shall adjoin the navigable water to the perquisites of wharfage and other like tolls and charges" (Rec. p. 17).

(a) *The locus in quo is within the taxing district of Jersey City.*

It is stipulated that if the lands in question became a part of Jersey City, they became so under the provisions of Section 1 of an Act to reorganize the local government of Jersey City, approved March 31st, 1871 (Ex. C-18 Rec. p. 108); Sections 1 and 4 of an Act approved February 4th, 1873 (Ex. C-19 Rec. p. 109) consolidating Jersey City and Greenville; and Section 1 of an Act of March 18th, 1863 (Ex. C-20 Rec. p. 109) incorporating the Township of Greenville.

The boundaries of the Township of Greenville, as described in the latter Act, are as follows: "On the Southeast by New York Harbor, on the West by Morris Canal and lands of James Curry, Esq., on the Northeast by a road or lane known as Myrtle Avenue, with a continued line running Southeasterly from said Avenue to New York Harbor and Northwest from said Avenue to the Hackensack River."

By the compact of 1833, between New Jersey and New York, (Rec. p. 24; Ex. C-83 Rec. pp. 170, 171), "the State of New Jersey has the exclusive right of property in and to the land under water, lying West of the middle of the Bay of New York, and West of the Middle of that part of the Hudson River which lies between Manhattan Island and New Jersey."

The Act of New Jersey of February 22nd, 1840, creating the County of Hudson, described the same as follows (Ex. C-85 Rec. p. 174: "Thence down the said Passaic River and Newark Bay, in the several courses thereof, on the boundary lines between the County of Bergen, as the same stood before the passing of this Act, and the Counties of Passaic, and Essex, to Kill-Van-Kull; thence,

Eastwardly, on the boundary line between this State and the State of New York, to the Hudson River; thence, Northwardly, continuing on the said boundary line between this State and the State of New York, up the Hudson River to the place of beginning, * * * and said lines shall hereafter be the division lines between the Counties of Essex, Passaic and Bergen, and the State of New York and the said County of Hudson, respectively."

The United States Circuit Court of Appeals, 208 Fed. 854, 858 (Rec. p. 204) commenting on these facts, said: "It will thus be seen that the *locus in quo* is in Hudson County. Is it also in Jersey City? It will be noted that no contention is made that, if not in Jersey City, it falls within any other New Jersey municipality."

The Court then reviews in a most masterly way numerous statutes and decisions, on the question of boundaries and location, and by them conclusively shows that the *locus in quo* is in Jersey City (Rec. pp. 203-206).

(b) *The lands in question are subject to taxation.*

It has been decided by both the State and Federal Courts, that the power to tax land under the tide water of New York Bay, within the territorial limits established by the agreement of 1833, *supra*, is in the State of New Jersey.

In *Central R. R. Co.* v. *Jersey City*, 70 N. J. L. 81, affirmed by the New Jersey Court of Errors and Appeals, 72 N. J. L. 311, the Court, in reviewing taxes levied by Jersey City upon certain lands lying between the middle of New York Bay and its low-water line on the New Jersey shore, at page 97, said: that "the agreement of 1833 between the Commissoners representing the States

of New Jersey and New York having been confirmed by their respective legislatures, and approved by the Congress of the United States, established the boundary line between this state and the State of New York in the middle of the Hudson River and of the Bay of New York, and that the sovereignty of the State of New Jersey is coextensive with the territorial limits thus established, subject only to such extra-territorial jurisdiction of a judicial character as was by the said compact conceded to the State of New York, from which it results that the sovereign power of taxation over all the territory thus defined resides in the State of New Jersey."

Upon affirmance in this Court, 209 U. S. 473, it was held, that lands lying between the middle of New York Bay and the low-water line on the New Jersey shore are taxable by New Jersey.

The *locus in quo* being within the taxing district of Jersey City, it was authorized to levy the taxes on the land in question and sell the same in default of payment.

It is respectfully submitted that the above is decisve of this question, and disposes of Points V and VIII of Brief for Appellant.

POINT III.

The findings of the Commissioners of Adjustment are conclusive in the instant case.

The arrearages of taxes against the property of appellant were adjusted by Commissioners appointed under an Act of the Legislature of New Jersey, approved March 30th, 1866, being Chapter 112, (Compiled Statutes of New Jersey, Vol. 4, p. 5205) known as the Martin Act, and as so ad-

justed, were confirmed in accordance with the Act, by a Judge of the Hudson County Circuit Court (Rec. p. 54).

The report of the Commissioners, together with the record of confirmation, was subsequently removed by certiorari, into the Supreme Court of New Jersey, and the order of confirmation in so far as the property of the appellant was concerned was affirmed.

Jersey City v. *Speer*, 78 N. J. L. 34, 44.

The Judgment of the Supreme Court, **supra**, was affirmed by the Court of Errors and Appeals of New Jersey.

Jersey City v. *Speer*, 79 N. J. L. 598.

The object of the Martin Act was to have adjusted taxes, which had become in arrears and unpaid and in many instances uncollectible because of alleged irregularities in assessments and alleged unconstitutionality of laws under which the same were levied, and in lieu thereof, to levy and impose a new tax.

The Commissioners, in the instant case, acted upon the arrearages of taxes against the lands of the appellant, and such action has been subjected to judicial review, as above stated, and the tax affirmed, and all such actions have been taken after hearings afforded to the appellant, as provided in Section 2 of the Act, which specifies that "at the time and place mentioned in said notice all persons interested in said matters, whether as tax payers, owners of assessed lands or otherwise, shall be entitled to appear before said commissioners and be heard either personally or by counsel." The appellant appeared by counsel, both before the Commissioners and before the Courts on con-

firmation of the report. Section 3 of the Act provides that when any such adjustment has been made and the report confirmed, the report "shall be final and conclusive upon the said City, and upon all persons owning or having any interest in or lien upon the said lands, and against all persons whomsoever, and the amount so fixed, determined, certified and confirmed in each case, shall thereupon become and be a valid and binding tax, assessment and lien on the lands so designated, in lieu and instead of all outstanding claims of the city for arrearages of taxes, assessments, or water rates levied or confirmed, or attempted to be levied or confirmed, prior to the making of said report, and shall be a valid lien on said lands, having priority over all other liens, claims or demands whatsoever, except taxes, assessments, or water rates levied after making of the said report."

As this appellant was a party to these proceedings in the State Courts, which had undoubted jurisdiction over the subject matter of the controversy, and over the controversy itself, it is respectfully submitted that such judgment and tax so fixed cannot be attacked collaterally in any other proceeding by this appellant, and every question raised by the appellant in this suit was open to presentation, decision and review in the proceedings before the Supreme Court and the Court of Errors and Appeals, and if decided adversely to the contention of the appellant, was subject to review by him in the Federal Courts, in so far as it involved the constitutional question sought to be raised in this case.

The United States Circuit Court, 189 Fed. 419 (Rec., p. 89), said: "In these proceedings the commission will be presumed to have proceeded according to law. If in the readjustment of the taxes, the commission has included in its findings,

taxes for years to which such presumption could be enforced, or for years the lien for which was lost at the time the premises passed into the ownership of the complainant, and could not thereafter be legally established against his ownership in such lands, an adequate remedy at law, by appropriate proceedings in the state courts, was at his command. Municipal operations are dependent, directly or indirectly, upon moneys derived from taxes, and interference by injunction with the collection of such taxes legally imposed, upon the ground of laches, will be accorded only where the complainant's right is clear, the injury imminent, and the remedy at law inadequate for his protection."

The United States Circuit Court of Appeals, on affirmance, 208 Fed. 854, 861, said (Rec., p. 207): "It is, of course, clear that if the fee of the lands in question was in the state, or if the lands themselves were not in Jersey City, no valid basis existed on which any adjustment could be based, but it is equally clear that if these lands are in Jersey City and if the plaintiff and not the state is the owner of them, they are taxable by the authorities of Jersey City and the adjustment of taxes thus imposed can be and was lawfully confided to such a tribunal. If so, the tax-payer is not denied due process of law and the action of such tribunal cannot be attacked collaterally. That the lands in question are in Jersey City, and that the plaintiff, not the State is the owner thereof, we have already found, so that the objection which the plaintiff made to the jurisdictional power of the commission, was made without foundation. That he did not avail himself of his further right to raise the other question he now seeks to raise as to lien, limitation, the fact that some of the taxes were assessed prior to the conveyance,

and other kindred matters does not change the situation, for the law gave him that right before the Commission. He not only appeared before it, but was represented by counsel when the report came up for confirmation in the Circuit Court of Hudson County."

In *Stanley* v. *Supervisors,* 121 U. S. 535-550, the Court said: "In nearly all the states, probably in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or organization, as they are often termed, with sometimes a right of appeal from their decision to the Courts of law. * * * To these boards of revision, by whatever named called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out, by statute, they are conclusive, whatever errors may have been committed in the assessment."

Manifestly, all of the questions raised by Points IX and X of Brief for appellant are *res adjudicata.*

It is respectfully submitted that all the questions of law involved in the instant case were carefully and exhaustively considered, and correctly decided in the opinions of the learned Judges of the Courts below, and that the decree of the United States Circuit Court of Appeals should be affirmed.

JOHN BENTLEY,
Attorney for Appellees.

JOHN MILTON,
EDWARD P. STOUT,
Of Counel.

LEARY *v.* THE MAYOR AND ALDERMEN OF THE CITY OF JERSEY CITY, ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

No. 3. Argued November 12, 13, 1918.—Decided January 7, 1919.

An instrument executed in the name and behalf of the State of New Jersey by the State Riparian Commission, after reciting an application and agreement for a lease of certain submerged land, the fixing of a specified rental and of a larger sum to be paid for a conveyance free from rent, proceeded to "bargain, sell, lease, and convey" the lands to the applicant corporation, its successors and assigns, and "the right, liberty, privilege and franchise to exclude the tide water" from such land "by filling in or otherwise improving the same and to appropriate the land . . . to their exclusive private use;" an habendum declared that the lands and all rights and privileges exercisable within and over or with reference to the same should be held by the company, its successors and assigns forever, subject to the payment of the specified rent in semi-annual instalments, and

there were covenants for payment of the rent and for right of re-entry by the State for non-payment, and for conveyance of the land or any part thereof to the company, its successors or assigns, free and discharged of the rent, upon payment of a sum specified, or an equitable portion of it.

Held, that, under the law of New Jersey, there was a grant of the fee, subject to a rent charge, and that the lands were taxable against the grantee and its assigns as owners. P. 331.

208 Fed. Rep. 854, affirmed.

THE case is stated in the opinion.

Mr. John M. Enright, with whom *Mr. Merritt Lane* was on the briefs, for appellant.

Mr. Edward P. Stout, with whom *Mr. John Bentley* and *Mr. John Milton* were on the brief, for appellees.

MR. JUSTICE PITNEY delivered the opinion of the court.

This was a suit in equity brought in the United States Circuit (afterwards District) Court for the District of New Jersey by Leary, the appellant, against the City of Jersey City and the City Collector, to remove a cloud upon the title held by Leary in certain lands lying beneath the waters of New York Bay adjacent to the New Jersey shore, arising from the lien asserted by the city to secure payment of certain taxes assessed against those lands and alleged by complainant to be invalid under the constitution and laws of the State and repugnant to the Constitution of the United States. The Circuit Court dismissed the bill (189 Fed. Rep. 419), the Circuit Court of Appeals for the Third Circuit affirmed its decree (208 Fed. Rep. 854), and an appeal to this court was allowed.

The lands in question were granted or leased April 30, 1881, by the State of New Jersey, acting by its Riparian Commissioners appointed under an Act of March 31, 1869 (P. L. p. 1017), supplementary to an Act of April 11,

1864 (P. L. p. 681). The recipient of the grant was the Morris & Cumings Dredging Company, a corporation of the State of New York, and this company on February 24, 1904, assigned its interest to appellant. The taxes in question were assessed annually for the years 1883 to 1905, inclusive, amounted in all to $163,392.24, and remain unpaid. The lands having been advertised for sale by the City Collector to pay them, the original bill was filed to restrain such sale. Afterwards the city, under an act of the legislature known as the Martin Act, approved March 30, 1886, (P. L. p. 149), and its supplements, caused an adjustment of the taxes to be made, which was confirmed by a circuit judge, pursuant to the act. The assessment resulted in a large reduction in the amount of the taxes, fixing the aggregate burden upon appellant's land at about $108,000, including the taxes for the years 1904, 1905, 1906, and 1907, which were included in the adjustment. The adjusted taxes were made the basis of a supplemental bill herein. At the same time they were reviewed by the Supreme Court of the State upon a writ of certiorari prosecuted by the city, and were sustained by that court and by the Court of Errors and Appeals. *Jersey City* v. *Speer*, 78 N. J. L. 34; 79 N. J. L. 598. That review, however, did not involve the questions now raised.

In the present suit the validity of the taxes was assailed principally upon four grounds: First, that the lands were not owned by the Morris & Cumings Dredging Company or by appellant in such a sense as to make them taxable in their hands under the state laws, but on the contrary remained the property of the State; Second, that the lands, although within the territorial limits of the State of New Jersey, were, by the compact made in the year 1833 between that State and the State of New York, approved by Act of Congress of June 28, 1834, c. 126, 4 Stat. 708, made subject to the governmental jurisdiction of the State of New York, and that the imposition of a tax upon

them under the authority of the State of New Jersey would deprive appellant of his property without due process of law in contravention of the Fourteenth Amendment to the Constitution of the United States; Third, that the lands were not within the taxing district of Jersey City; and Fourth, that the lien of the taxes had expired.

Since the suit was commenced the second contention, which raised the only substantial federal question, has been decided adversely to appellant by this court in *Central R. R. Co.* v. *Jersey City*, 209 U. S. 473.

The third and fourth points are satisfactorily dealt with in the opinions of the Circuit Court and Circuit Court of Appeals.

The first point—whether the interest of appellant and of his predecessor in title were taxable under the laws of the State—is the one chiefly relied on in this court. It is insisted, and for the purposes of the decision we assume, that the state laws provide for taxing lands only against the owner, and not against a lessee. Hence, the crucial question on this branch of the case is whether the riparian grant under which appellant derives his title is a mere lease, as contended by him, or confers such an ownership as is taxable under the state laws; in short, whether the State or the grantee is the owner.

The legislation by which the powers of the riparian commissioners are defined is set forth in the opinion of the Circuit Court (189 Fed. Rep. 422–425), and need not be here repeated. Suffice it to say that it authorizes the making, in the name and behalf of the State, of such a grant or lease as that which was made to the Morris & Cumings Dredging Company, and which that company assigned to appellant. The instrument recites that the company, being the owner of lands fronting on New York Bay, and desirous of obtaining a lease for the lands under water lying in front of them, had applied to the riparian commissioners and the governor for such a lease, and in com-

pliance with the application the commissioners had agreed to lease the submerged lands in question, and had fixed the sum of $4,233.60 as the annual rental to be paid for them, and the sum of $60,480 as the price on payment of which a conveyance of the lands free from rent would be made; the instrument proceeds in the name of the State to "bargain, sell, lease, and convey unto the said The Morris and Cumings Dredging Company and to its successors and assigns forever" the submerged lands in question (describing them), "and also the right, liberty, privilege and franchise to exclude the tide water from so much of the lands above described as lie under tide water by filling in or otherwise improving the same and to appropriate the land above described to their exclusive private use." There follows an habendum clause to the effect that the lands granted and all rights and privileges exercisable within and over or with reference to the same in manner and form as granted are to be held by the company and its successors and assigns forever, subject to the payment of the rent specified in semi-annual instalments. There is an express covenant for the payment of the rent at the times appointed, with the right on the part of the State to reënter for nonpayment; and there is a covenant by the State to convey the lands or any part thereof to the company, its successors or assigns, free and discharged of the rent, upon payment to the State of the sum of $60,480, or an equitable portion thereof.

With respect to a similar grant, made under the same statutory authority and containing like provisions, the court of last resort of New Jersey has held that it transmitted the entire estate of the grantor to the grantee; that the interest remaining in the State was not an actual estate but a right of entry for nonpayment of rent, and the mere possibility of a reverter for condition broken did not amount to an estate in reversion; and that the lands covered by the grant were not lands belonging to the

State within the meaning of a section of the general railroad act which limited the power of corporations created thereunder to condemn lands for the uses contemplated by the act. *Hudson Tunnel Co.* v. *Attorney General*, 27 N. J. Eq. 573, 578. In *Cook* v. *Bayonne*, 80 N. J. L. 596, the Supreme Court of the State held that a riparian grant of the same character amounted to a conveyance in fee subject to a rent charge, and that the lands were taxable in the hands of the grantee. A similar view as to the nature of the estate which passes under a "riparian lease" was taken by Vice Chancellor Leaming in the recent case of *Ocean Front Improvement Co.* v. *Ocean City Gardens Co.*, 103 Atl. Rep. 419. The last two cases do not appear to have been reviewed by the court of last resort.

Appellant refers to that part of the lease which grants the right to exclude the tide water from the lands described by filling in or otherwise improving the same and to appropriate the lands described to private use, and upon the strength of this insists that the instrument, whether by way of lease or in fee, confers a mere license to reclaim, and does not constitute the licensee the owner of the land or extinguish public rights therein unless and until the license is executed by actual reclamation. *Polhemus* v. *Bateman*, 60 N. J. L. 163, a decision by the Court of Errors and Appeals, is relied upon to support this contention. But the authority of that case has been much restricted by the subsequent decision of the same court in *Burkhard* v. *Heinz Co.*, 71 N. J. L. 562, 564, where it was pointed out that the judgment in the *Polhemus Case* was not as far reaching as the opinion; that its legal effect was simply that such common rights as the right to fish in the sea were not annulled by a riparian grant until the grantee made some appropriation of the property inconsistent with them. We do not regard this as conclusive upon the present question.

The other cases particularly relied upon, *Long Dock Co.*

v. *Board of Equalization of Taxes*, 87 N. J. L. 22; *Long Dock Co.* v. *State Board of Assessors*, 89 N. J. L. 108; 90 N. J. L. 701, so far as they touch the point at all, are based upon the language of the charter of the Long Dock Company, P. L. 1856, p. 67, and are not inconsistent with *Hudson Tunnel Co.* v. *Attorney General; Cook* v. *Bayonne*, and *Ocean Front Improvement Co.* v. *Ocean City Gardens Co.*, *supra*. Under the doctrine of these cases, which we accept as well founded in reason, to say nothing of authority, appellant's estate is taxable under the New Jersey laws.

Other points are raised, but none that seems to require mention.

Decree affirmed.